

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ZIA AGRICULTURAL CONSULTING,)
LLC.,)
Plaintiff,)
vs.) NO: 20-CV-445 MIS-JHR
TYSON FRESH MEATS, INC.,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL
VOLUME II OF IV
BEFORE THE HONORABLE MARGARET I. STRICKLAND
UNITED STATES DISTRICT JUDGE
TUESDAY, JULY 12, 2022
8:37 A.M.
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

(Proceedings recorded by machine shorthand and
transcript produced by Computer-Aided Transcription.)

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UNITED STATES DISTRICT COURT
100 N. Church Street, Las Cruces, NM 88001
(575) 528-1430

1 Appearances of Counsel:

2

3 FOR THE PLAINTIFF:

4

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6 101 California St., Ste. 3800
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9 BY: JOHN S. WORDEN, ESQ.
10 SARAH E. DIAMOND, ESQ.

11 Also Present: Sean Perez, Zia Agricultural Consulting
12 Narciso Perez, Zia Agricultural Consulting
13 Zoe Gallagher, Venable, LLP, staff

14

15 FOR THE DEFENDANT:

16

17 MAYER, LLP
18 9400 Holly Ave. NE, Bldg. 3 St.
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21 BY: BRIAN J. FISHER, ESQ.

22

23 and

24

25 TYSON FOODS
26 Law Department
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31 BY: DANIEL GOMEZ, ESQ.

32

33 Also Present: Robert Scherer, Tyson representative
34 Norma Oliver, Mayer, LLP, staff

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40

41 UNITED STATES DISTRICT COURT
42 100 N. Church Street, Las Cruces, NM 88001
43 (575) 528-1430

1 I N D E X

2 WITNESSES FOR THE PLAINTIFF: PAGE

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11 E X H I B I T S

12 JOINT EXHIBITS: IDENTIFIED RECEIVED

13 10 1-16-19 Text message from Robert 21 20
 14 Scherer to Narciso Perez
 15 12 1-23-19 Text message from Robert 30 30
 16 Scherer to Narciso Perez
 17 13 1-23-19 Text message number two 31 31
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 19 Perez
 20 14 1-23-19 Text message number three 32 32
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 25 17 2-4-19 E-mail between Robert 36 36
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 18 18 2-4-19 Zia's Cost Plus model 9 8
 19 19 2-4-19 E-mail from Narciso Perez 94 93
 20 to Robert Scherer, Subject:
 21 "Show list"
 22 20 2-5-19 Text message from Robert 47 47
 23 Scherer to Narciso Perez
 24 21 Not identified 237
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(* Reporter's Note: All exhibit identifications listed herein have been duplicated from the parties' Joint Exhibit List, Document 102.)

1 (In Open Court at 8:37 A.M.)

2 (Jury not present.)

3 THE COURT: Counsel, are we ready for the jury?
4 For plaintiff?

5 MS. DIAMOND: Yes, Your Honor.

6 THE COURT: Are we ready for the jury?

7 MR. FISHER: Yes, Your Honor.

8 THE COURT: I just wanted to let the parties
9 know, I was watching Juror in Seat Number 5, after you
10 brought that to my attention. I think she's writing. I
11 don't know if you can see it from your angle, but she has a
12 pencil and I think she's taking notes. I don't think she's
13 texting on her phone. But if you see something else, bring
14 it to my attention.

15 MR. WORDEN: We noticed that after you gave the
16 instruction, but she was doing something different before.
17 But I think we solved it.

18 THE COURT: All right. That's fine. Thanks for
19 bringing that up. We'll keep an eye on her. As long as
20 everybody's okay, we can bring in the jury.

21 (Discussion off the record.)

22 (Jury present.)

23 Thank you. You may be seated.

24 Ms. Diamond, you may continue with your direct
25 exam of Mr. Perez.

1 MS. DIAMOND: Thank you, good morning.

2 **NARCISO PEREZ,**

3 After having been previously duly sworn, did make
4 the following answers:

5 **DIRECT EXAMINATION (Continued)**

6 Q. (BY MS. DIAMOND): When we left off yesterday,
7 you were testifying that, in the fall of 2018,
8 Mr. Scherer contacted you about some natural cattle.

9 What happened next?

10 A. Yes, ma'am. Mr. Scherer and I had various discussions
11 in the fall. We agreed that a couple of things would
12 happen: The first thing is we needed to set a time up to
13 look at some of the cattle. Number two, he was pressing me
14 for exactly, you know, what we had, what we wanted to do;
15 you know, what our plans were.

16 And it had been a tumultuous year, to say the
17 least, between us. So our team was working -- because the
18 fall is when we receive a lot of these cattle. Our team was
19 working really hard because there was a lot of cattle moving
20 around from ranch of origin, the cow-calf operator, they're
21 weighing about 500, 600, 700 pounds coming to different
22 backgrounders to go into the next stage of the operation.
23 And then there was a tremendous amount of paperwork for each
24 of these cattle to trace them back to the ranch of origin.

25 So we were building out our proposal for

1 Mr. Scherer, and I told Mr. Scherer that we were building
2 out our proposal; that we can't continue doing things the
3 way we had done them the previous year because it just
4 didn't work for us. We lost too much money.

5 MS. DIAMOND: I'd like to enter Exhibit 18.

6 THE COURT: From Tyson?

7 MS. DIAMOND: Counsel, Exhibit 18 is
8 (indicating)...

9 MR. FISHER: Oh, yes. No objection.

10 THE COURT: Does Tyson stipulate to the
11 admission?

12 MR. FISHER: Yes, Your Honor, we do.

13 THE COURT: Okay. Exhibit 18 is admitted.
14 (Joint Exhibit 18 was admitted into evidence.)

15 Q. (BY MS. DIAMOND): Mr. Perez, is this
16 Exhibit 18 about the same exhibit that's on this
17 board next to you?

18 A. Yes, ma'am. If you don't mind, I would like to -- if
19 you're going to ask me questions about it, can I stand in
20 front of this big one? It has big numbers, for somebody
21 that has --

22 THE COURT: That's fine. This one is pretty
23 small, the paper one.

24 MS. DIAMOND: Can we zoom in on it, as well?

25 MS. GALLAGHER: (Indicating.)

1 Q. (BY MS. DIAMOND): Yes, you can approach it.

2 And if we can zoom in on it as well --

3 THE COURT: Just be sure to use the microphone,
4 Mr. Perez.

5 THE WITNESS: Yes, ma'am.

6 Q. (BY MS. DIAMOND): Mr. Perez, what is this
7 document?

8 A. Ms. Diamond, this is a document that is a cost plus
9 proposal, that, on January the 14th, 2019, I had a copy of
10 this document with me in Happy, Texas.

11 Q. There's a lot of numbers on here. It's pretty
12 confusing. Can you explain what this bottom box represents?

13 A. Yes, ma'am. First of all, we were very excited about
14 this body of work. The bottom box -- if you want me to
15 start at the bottom box, I will. If you want me to start at
16 the far left, I will. Whatever you'd like for me to do.

17 Q. Can you pick up that box and maybe put it up on the
18 board so the jurors can see better?

19 A. (Complying.)

20 So knowing that Mr. Scherer works for a packing
21 house and knowing that they want to buy cattle in
22 certain months, what we did is, is we tried to make this as
23 simplified as we could, by, again, taking the cattle cost,
24 the freight for the cattle, the feed cost, the interest on
25 both, a death loss of 3 percent, and a small margin of 7 --

1 6 to 7 percent and model out what would happen with very
2 specific ranch cattle, if we would start from the point we
3 received them, grow them, feed them, finish them, deliver
4 them for beef production. And so those numbers are here
5 (indicating).

6 And this box at the bottom basically was meant to
7 be extremely easy to understand. Which the yellow tells you
8 that if you take certain cattle and you feed them "X" amount
9 of pounds of feed and give them "X" amount of time, as we
10 discussed yesterday with the little chart, when the cattle
11 go from one stage to the next and go from 1,000 pounds to
12 1,300 -- 1,300, 1,400 pounds, we created a flowchart here
13 that has very specific costs. So that we knew that, for
14 example, in the month of April, we were going to have
15 1.6 million pounds of cattle. Our cost in those cattle
16 would be 2.5 million-and-change dollars. Our price per
17 pound would be 1.5593. And the cost per head for those
18 cattle would be \$1,836. We knew how many steers there would
19 be: There would be 1,176. We knew how many heifers there
20 would be: 187 heifers. So, in the month of April, there'd
21 be 1,363 head.

22 Now, we have to remember that the only man on
23 planet Earth that can decide when any of these cattle go to
24 the packing house is Bob Scherer. It's not the Zia team.
25 It's not the feedlot owner. It's Bob Scherer. If Bob

1 Scherer wants to take them in April, this is what they're
2 going to cost; this is how many of them there's going to be;
3 this is what they're going to weigh, et cetera, et cetera.

4 So, if you go down to the bottom, you know, it
5 gives you an average weight for all the cattle. And then
6 the green boxes are May. It does exactly the same thing.
7 It takes the cattle that can get to May with a reasonable
8 amount of time, and it tells you there's going to be
9 3,160,521 pounds of cattle.

10 (Reporter interruption for clarification.)

11 And the total costs for May are \$5,213,567.29.
12 The average price per pound for those cattle in May is going
13 to be 1.6496 per pound. The average cost per head is going
14 to be \$1,883.51. You take the amount of steers that were
15 there for that month, 2,248, the amount of heifers, 520, for
16 an estimated 2,768.

17 The orange boxes, we do the same exact thing for
18 June. For June, we have 5,313,053.35 pounds. The cost:
19 \$8,591,650.02. The cost per pound is \$1.61, \$1.6171 per
20 pound. And the total head for June -- the total cost per
21 head, sorry, is \$1,894.52. In the month of June, we project
22 that we have 2,887 steers, 1,648 heifers, for a total of
23 4,535 cattle. And then, if you keep working your way right,
24 you finally get to a total pounds to be shipped of
25 10,079,327 pounds; total cost, \$16,308,996.44; an average

1 price per pound of 1.6181; and an average price per head of
2 1,881.95. And if you work your way down to this box here on
3 the bottom right corner, it's a total of 8,666 cattle.

4 Q. Mr. Perez, this is natural cattle? Is this GAP or
5 NHTC?

6 A. These cattle, they start -- they all start out as GAP,
7 natural, NE3 cattle.

8 Q. And you said this is a cost plus proposal, so those
9 totals that you just went through, the total cost of the
10 \$16,306,996.44, that represents all the costs, plus your
11 "plus," which is your premium, right?

12 A. Remember that this document has six elements: The
13 cattle cost from the ranch, the freight to get them from the
14 ranch to a backgrounder, and the freight to get them from
15 the backgrounder to a finisher; it has all the feed costs at
16 the backgrounder, and then, when they move to the finish
17 feedyard, it has all the costs at the finisher yard. Then
18 we put a small interest charge on that. And then we took
19 all of the numbers that we received from the ranches and we
20 deducted 3 percent off of their head count. So, in the
21 cattle business, an accepted death loss in a process like
22 this is 2 to 5 percent.

23 Q. Of the total cattle?

24 A. If you buy 100 cattle from Stormy Burch in Gillette,
25 Wyoming, you can expect to lose three to five head of those

1 cattle from the time that you buy them till the time that
2 they go to Tyson.

3 Q. And why would you expect to lose those?

4 A. Because these cattle get stressed out when you move
5 them around. They get stressed out with weather. They get
6 stressed out if you overfeed them for too long of a time.
7 They're very much subject to stress.

8 So in our head count, what we did is, is that we
9 went ahead and took away a 3 percent number off of all of
10 our received head counts so that we were dividing out all of
11 our costs by what we perceived to be the cattle that were
12 left alive. And the last thing that we did is that we added
13 a margin of 6 to 7 percent, which was about \$125 a head. If
14 you take \$1,881 and you multiply that times 6 or 7 percent,
15 you're going to see that comes out to about 121.30. So we
16 put \$125 margin on these cattle.

17 The idea with this document on this day, this was
18 a proposal. The idea is, is that you know where every calf
19 came from; you know exactly where they are; you know what
20 sex they are, steers or heifers; you know what the estimated
21 remaining head count after a 3 percent death loss deduction
22 is. If you want to take the cattle out on April the 15th,
23 this tells you which cattle are going to weigh what. And it
24 tells you which cattle could potentially be taken out on
25 April the 15th. And if you follow that over to this

1 category that's light blue, this tells us what the cattle
2 are going to cost if you take those cattle from these
3 ranches out on these dates. It tells you what they cost
4 here (indicating) and on and on.

5 If you do the May cattle the same way, the cattle
6 that could potentially hit May, they're here. It tells you
7 what they're going to weigh. It tells you what all their
8 costs are going to be, total. If you keep going over to the
9 green side, it gives you their cost per pound.

10 So what we were thinking here is, let's encompass
11 these six items and make it really easy for Bob Scherer to
12 look down at this document and say, "I like the cost. I
13 have looked at the cattle. I like the cattle. The price
14 per pound is not out of line. We can use this many cattle."
15 We know he can figure up how many pounds of different types
16 of cuts and stuff he can get out of these cattle because
17 that's what he's good at. We felt like this cost plus
18 proposal had all kinds of optionality for Tyson. And for
19 us, we do our job, we don't have excessive death loss, and
20 we're going to make \$125.

21 Q. Per head?

22 A. Per head.

23 Q. Of the GAP cattle?

24 A. Yes, ma'am.

25 Q. Had Zia ever put something like this together for

1 Tyson before?

2 A. You know, I put something like this together for Tyson
3 before, but I've never put something like this together for
4 Bob Scherer. This was the first time.

5 Q. So there's a lot of numbers. And, obviously, it's
6 clear for you, but I think, looking at it, we don't know
7 what these numbers and words mean. Can you talk about the
8 process of filling in all of these columns and getting all
9 of this information for Zia?

10 A. Yes. So, when we buy the calves from a ranch, the
11 rancher weighs the calves and we go to the ranch and receive
12 the calves. And when we weigh them and count them and know
13 how many steers and heifers there are, we create a document.
14 That's our receiving document and that's our invoice when we
15 bought those calves from say, Stormy Burch.

16 Then -- so that begins the process. The next
17 thing is, if we hire Turpin Trucking to take them from
18 Gillette, Wyoming, to Happy, Texas, they invoice us for the
19 freight. And we take that invoice and put it together with
20 the cattle invoice, and there you have your freight. And
21 everything that we did in the way of feed and feeding, we
22 tried really hard to lock down as many of the variables as
23 we could. For example, at Happy, we lease all the wheat
24 pasture, but we put in a set number. And we lease the wheat
25 pasture in a way that it doesn't have a lot of variability

1 in cost.

2 Q. Is Happy one of the ranches that's in Happy, Texas?

3 A. You know, we're talking about Happy all the time, and
4 what it is, is, over near the Texas/New Mexico line, a lot
5 of farmers plant dryland wheat. And what they do is they
6 try to -- they try to get some revenue by grazing it. And
7 then they take the cattle off and they harvest it. So it's
8 a short-term grazing solution.

9 So we lease that pasture by the pound to gain.
10 So we don't own it. And so we lease it basically from just
11 a couple of different families there, but there's enough
12 pasture in between Canyon and Happy to run upwards of 10,000
13 cattle, if we want to put them there.

14 So Happy is a compendium of maybe 30 different
15 plots of land. Every one of them is fenced off separately.
16 Some of them have different owners. Lots of them belong to
17 like a family, but a granddaughter has a section and the
18 daughter has two sections, and the son has three sections
19 and things like that. So these things have lots of fences
20 around them. But we like that because it gives us lots of
21 places to take these ranches and keep the calves separately
22 while we're trying to grow them. So we're not co-mingling
23 cattle from different ranches and things like that. Helps
24 reduce on disease; increases the gain.

25 But, anyway, the process is put actual cattle

1 cost, put actual freight cost, have the invoices in there;
2 the actual feed cost, put it in there. And you calculate an
3 interest charge to get them to this point or to this point
4 or to this point (indicating). You just calculate simple
5 interest, and then you take the 3 percent off the head
6 count, so you're not having to worry about that anymore.
7 And you add \$125 to it and you total it up. And you're
8 going to get numbers like \$1,836.96 for April. Or like
9 \$1,883.51 for May. Or like \$1,894.52 for June.

10 Q. Were the three months included so that, if Tyson
11 decided to pick up these cattle early or late, Zia would be
12 covered?

13 A. The reason we designed this is so that Bob Scherer
14 would have a tool to be able to manage a large amount of
15 cattle at a glance. And it's also set up so that, instead
16 of us having an antagonistic relationship where he's pushing
17 us to give him the cattle in a certain month, he can take
18 them whenever he wants. It's up to him. He's going to do
19 it anyway, so instead of us going backwards and forwards,
20 pushing and pulling and fighting each other, just let him
21 take them any time he wants. We'll make our \$125; he'll get
22 the cattle. He can have them whenever he wants.

23 And the idea was this was a proven concept.
24 There's 8- or 9,000 cattle on this document. The idea was
25 to grow this document to 20-, 30-, 50-, 100,000 cattle.

1 That's what the idea was. It wasn't to, you know, come up
2 with a bright idea and try and catch him asleep. We were
3 trying to help the man manage his needs.

4 Q. So under this proposal that you gave to Mr. Scherer,
5 Tyson would be paying for all the costs, you said, of the --

6 A. That's what's they'd be --

7 Q. -- cattle, of the feed, of the freight, of the
8 interest, the death loss; that was your proposal?

9 A. Feed -- cattle; freight; feed; interest on the money;
10 death loss, 3 percent deducted from the head count; and add
11 \$125. That's what they'd be paying.

12 Q. When did you first give a copy of this proposal to
13 Mr. Scherer?

14 A. Well, Mr. Scherer and I had various conversations in
15 the fall of 2018. And we had gone back and forth about when
16 we could get together, eye to eye. I thought it was
17 important to show him some of the cattle. He thought it was
18 important to come down and see the cattle.

19 Q. In person?

20 A. Yes, ma'am. So, in the fall, that's when we received
21 all these cattle. So let's say they started coming in
22 September, October, November. And, you know, there's like a
23 lot of documents. Think about documents for almost 9,000
24 cattle when you're talking about their cost, all the
25 documentation for GAP, and the audit process. Happy

1 cattle -- Happy Pastures have to be audited. All these
2 ranches have to be audited. You know, the freight has to be
3 set up. All the freight bills for each and every one of
4 these things. Because, when we sent these bills to Tyson,
5 we wanted them to be on the money, tight, solid. We wanted
6 Tyson to be able to pick the phone up and call Turpin
7 Trucking and say, "The guys from Zia sent us a bill to move
8 the cattle from Gillette to Happy, Texas. What did you guys
9 charge?" and know that all of these things tied out, so that
10 they would feel good about how we went about putting these
11 costs together.

12 Q. Were these cattle already promised to Tyson in the
13 fall of 2018?

14 A. What I can tell you is that we'd had discussions about
15 these cattle, but they were not sold to anyone. Period.

16 Q. Zia had a right to do whatever it wanted with these
17 cattle in the fall of 2017 [sic]?

18 A. We own the cattle. We can do whatever we want with
19 them.

20 And Mr. Scherer knew that it was a bloody 2018
21 for us. And I'm guessing it wasn't a bloody '18 for only
22 us, but it was a bloody '18 for us. And he knew that we
23 needed to make a little bit of money if we were going to
24 continue this process.

25 And, again, really, the only reason that we were

1 excited about selling any more cattle to Tyson is that we
2 know that Tyson is constantly looking for really
3 high-quality cattle.

4 Q. Natural cattle or GAP cattle?

5 A. Whether they're GAP, natural, NHTC, or whatever, they
6 look for quality cattle. And we felt like we had a solution
7 to a lot of problems that procurement might have.

8 MS. DIAMOND: I'm going to enter Exhibit
9 Number 10. If we can pull that up.

10 And, if I'm not mistaken, Mr. Fisher, are you
11 stipulating to the exhibit?

12 THE COURT: Mr. Fisher, what's your position on
13 Exhibit 10?

14 MR. FISHER: (Indicating.)

15 THE COURT: It's admitted.

16 (Joint Exhibit 10 was admitted into evidence.)

17 (Discussion off the record.)

18 MR. FISHER: Your Honor, I do stipulate or agree
19 to the admission of the exhibits that Ms. Diamond -- if the
20 Court would prefer to do it one by one --

21 THE COURT: That's fine. How about she will
22 propose them, and then, if you have an objection, you let me
23 know. Otherwise, I'll assume they're stipulated.

24 Go ahead, Ms. Diamond.

25 10 is admitted.

1 Q. (BY MS. DIAMOND): If you can look at Exhibit
2 Number 10.

3 You can go back to the witness box, Mr. Perez.

4 A. (Complying.)

5 Yes, ma'am.

6 Q. What is this document, Mr. Perez?

7 A. This looks like a text message because there's
8 telephone numbers by it. It happened on 1-16-2019.
9 January 16th, 2019, at 3:54 in the afternoon.

10 It reads (reading), "Thanks for taking the time
11 to look at the calves with me. Let's get the feedlot
12 inventory up to date, get these calves in for May and June,
13 and we will go forward. Thanks, again."

14 Q. What meeting is Mr. Scherer referring to in this text
15 message?

16 A. He's talking about the meeting in Happy, Texas, where
17 I drove from Albuquerque early that morning and met him in
18 between Happy and Canyon, Texas, where we spent three,
19 four hours driving around. And that was on the 14th, on a
20 Monday.

21 Q. January 14th?

22 A. Yes, ma'am. And then we went to lunch for an hour or
23 two. And then I took him to his vehicle. The whole day, we
24 spent perusing over the document that's enlarged right there
25 (indicating), going over the specificity in the document and

1 the fine points. And, at the end of that day, after having
2 a very pleasant day together looking at cattle, discussing
3 the cost plus proposal -- at the end of that day, I took him
4 to his vehicle, he thanked me for spending the day with him
5 and showing him the cattle. He thanked me for giving him
6 our proposal and he said, "Things look really good." We
7 shook hands. He said, "I'm going to get on down the road
8 because I'm headed to some other operations." And I told
9 him that we would -- as soon as I got back, we would try
10 really hard to finish updating this document, the cost plus
11 proposal, so that he'd have 100 percent of everything that
12 we felt we could put into the document.

13 This document -- because we're moving cattle all
14 the time, everything is changing on the document because
15 it's fall and we're moving cattle. So we have our team.
16 Sean and his team is feverishly trying to update this
17 document because we want to give him something that's
18 accurate as possible. We want to give him something that he
19 can sink his teeth into and count on.

20 Q. So who set up the meeting with Mr. Scherer in Happy,
21 Texas?

22 A. I set the meeting up with Mr. Scherer. I don't know
23 if he called me, I called him, you know, for the final
24 meeting setting up, but the first time that we started
25 talking about these cattle in the fall is -- when he called

1 me, he said, "We have an impending meeting with Whole Foods
2 and we need to talk about your cattle, what you're going to
3 have, how many you're going to have, what's going on,
4 because we can't go do a deal with Whole Foods, if we don't
5 have enough cattle. And so we're kind of counting on your
6 cattle to do this."

7 Q. Did Mr. Scherer tell you how many of the natural
8 cattle it needed from Zia?

9 A. No. As a matter of fact, he said -- at the time he
10 insinuated that they would take all the cattle that we could
11 put together, but he was -- he had lots of availability open
12 if we wanted to embrace it.

13 Q. So he said that Tyson would take as much of Zia's GAP
14 cattle as it could source?

15 A. Yes, ma'am.

16 Q. And so where, specifically, did you meet Mr. Scherer
17 in Happy, Texas, on January 14th?

18 A. Where did I meet him?

19 Q. Yeah, where did you guys first meet up?

20 A. If my mind serves me correctly, we met in a wide spot
21 in the road between Happy, Texas, and Canyon. There's some
22 grain silos there in a wide spot in the road.

23 Q. And what happened next?

24 A. This place is right in the middle of all this pasture
25 that we have. So what happened next? We -- like I said, I

1 drove up. And he -- I don't know if he got there first or I
2 got there, but he jumped in my vehicle.

3 Q. So you guys drove around together?

4 A. Pardon me?

5 Q. You drove around in the same vehicle?

6 A. Yes, ma'am, we did.

7 Q. And when did you give him a copy of this document --
8 this proposal, Exhibit 18?

9 A. Before I left Albuquerque, Sean gave me two copies of
10 this document.

11 Q. Hard copies printed out?

12 A. Yes, ma'am. And I had one of those copies sitting on
13 the console of my pickup. I have a pickup that has two
14 seats and a console in the middle. And I had this document
15 sitting there because we were going to use this document to
16 discuss our proposal, and also we were going to talk about
17 the cattle we were looking at.

18 Q. Did Mr. Scherer look at this proposal?

19 A. I'm sorry?

20 Q. Did Mr. Scherer look at this proposal in your pickup
21 that day?

22 A. Sure he did. We were looking at cattle and we were
23 talking about the proposal, talking about the cattle, and
24 how big they might be, how small they might be, or whatever.
25 And we -- we went over this document from stem to stern.

1 And we went over all the cattle that we looked at in those
2 three or four hours.

3 Q. Did you explain what this document was to Mr. Scherer?

4 A. I did, yes.

5 Q. Did Mr. Scherer ask any questions about what this
6 document was?

7 A. He asked a few questions, but really, by and large,
8 what Mr. Scherer -- I saw no dissatisfaction or any
9 confusion or anything from Mr. Scherer. He was stoked when
10 he looked at the cattle.

11 Q. Can you describe your discussions with Mr. Scherer
12 about how this proposal would be something different than
13 what you had done with Mr. Scherer before?

14 A. Again, Mr. Scherer knew that we had a really rough
15 2018 financially. And he was trying to accomplish his goals
16 and objectives, which were he was trying to get cattle that
17 were very high quality into the program so that he would
18 have enough bodies to cover whatever he had for commitments
19 to his retailer. And we walked through the document from
20 right to left and left to right and up and down. And, you
21 know, I think he was fairly impressed with the fact that,
22 you know, we had put down some numbers that make it very
23 easy to see what these cattle are going to cost.

24 Q. Did you discuss the Nebraska weighted average when you
25 were in your pickup truck at Happy, Texas?

1 A. The only thing we discussed about the Nebraska
2 weighted average is I told him I couldn't do that anymore;
3 that that kind of deal would not work for us.

4 Q. And how did Mr. Scherer respond to that?

5 A. You know, Mr. Scherer told me that, you know, for me
6 to get this final version of this proposal to him with the
7 numbers and he'd look it over and either give me a "yes" or
8 "no." And that's what I asked him for. Mr. Scherer and I
9 had few deals, but the one deal we had with each other as
10 gentlemen is he has always told me that if he can't do what
11 needs to be done or can't use the cattle that we have on
12 grass or pasture that he will let us know so we can
13 immediately implant them and just move on; sell them to
14 Cargill, National, JBS, somebody else, or even sell them to
15 them as an implanted animal. He knows that. And he has
16 been kind enough to tell me, "Hey, I'm not going to have you
17 go put these cattle on feed before they leave pasture if we
18 can't put our heads together and figure something out.
19 You're welcome to implant them." That's all I asked him
20 for. And that's what I've asked him for year over year. He
21 seldom has let any cattle go to get implanted, but he has a
22 couple of times.

23 Q. So you were ready to let these cattle be implanted if
24 Mr. Scherer was not willing to agree to this cost plus
25 proposal?

1 A. Absolutely. The key element here is, when -- we were
2 talking about removing the risk for owning these cattle.
3 When they go onto feed, that's -- when I use the analogy of
4 buying a car and buying an insurance policy for that car
5 before you drive out of the car lot. When they leave grass
6 or wheat or backgrounding and they go into the feedyard,
7 somebody needs to take on the risk. Zia can take on the
8 risk by implanting the cattle and hedging them with the CME,
9 Chicago Mercantile Exchange, so that we don't have any
10 downside risk to the market. Tyson can do the same thing.
11 If they buy them, they can take on the risk. With this cost
12 plus proposal, Tyson's taking on the risk, so they should be
13 registering the cattle, not Zia.

14 Q. They're taking the risk because they're paying for the
15 cost of the calves --

16 A. Right.

17 Q. -- the feed, the freight?

18 A. They're taking on the risk to cover their downside
19 potential loss in market value. And this is a very
20 difficult thing to explain to people, but the most important
21 thing to understand is, is that Bob Scherer and I are
22 standing there at the car lot. And, if he's going to buy
23 the car, he's going to buy the insurance. It's like when
24 you first go to college and your parents say, "We're going
25 to pay the first semester of insurance for your car," but

1 they forget to do it and you don't pay it, either, and you
2 have a car wreck; you're in big trouble. So unbeknownst to
3 me, if Bob Scherer is shifting his feet around and has not
4 taken the risk on for these cattle, he has put Zia at great
5 danger. And this is something to always keep in
6 consideration, is that, you know, these are large contracts
7 for a lot of cattle, and any kind of movement in the market
8 can make catastrophe present itself at your doorstep.

9 Q. When Mr. Scherer was looking at a hard copy of this
10 proposal in your pickup in Happy, Texas, on January 14th,
11 did he say he didn't understand any of these columns?

12 A. No.

13 Q. Did he say he didn't agree with any of these columns?

14 A. No. No, ma'am.

15 Q. Did he say Tyson would never approve an agreement like
16 this?

17 A. No, ma'am. What he said is, is for me to send him the
18 final proposal. He wanted the cattle. He wanted me to say
19 yes. He wanted me to say I was going to ship them to him.
20 He wanted them to be gone off wheat pasture a hundred
21 percent.

22 Now, I'll point out to you that there was only
23 about 3,000 cattle on wheat pasture, the ones that say
24 "Happy Pasture" there, but all the rest of these cattle were
25 already set up. They weren't in the finish phase yet, but

1 these cattle were set up to basically just shift gears. Go
2 from backgrounding to finisher immediately and implant them
3 or don't implant them. It was set up that way on purpose.

4 Q. And in your pickup, on January 14th, in Happy,
5 Texas, did you tell Mr. Scherer that this was the only way
6 you could move these natural cattle into the feedyard?

7 A. I told Mr. Scherer that if we could not make a
8 guaranteed margin on these cattle that we wanted to implant
9 them. We didn't want to feed them natural anymore.

10 Q. On January 14th, in Happy, Texas, did Zia have to
11 sell these GAP cattle to Tyson?

12 A. No.

13 Q. Why is that?

14 A. Because we already had a plan in place to implant the
15 cattle and feed them as conventional cattle.

16 Q. Going back to Exhibit 10, so Mr. Scherer texts you
17 two days after your meeting. And what was your
18 understanding of "let's get the feedlot inventory up to
19 date, get these cattle in for May and June, and we'll go
20 forward. Thanks, again"?

21 A. He's asking me for our final proposal. And he is
22 insisting that we pick the cattle up and move them to the
23 feedyard.

24 Q. When Mr. Scherer and you parted ways on
25 January 14th, did he keep a copy of this proposal?

1 A. Yes, ma'am.

2 Q. How did your meeting end?

3 A. Very happy. Again, he looked at me and he said,
4 "Thank you so much for showing me these cattle. I
5 appreciate your time. And get me that final proposal. Get
6 it to me, get it to me as soon as you can, so I can approve
7 it."

8 Q. Did you shake hands?

9 A. We shook hands. We always shake hands when we say
10 hello and say goodbye. I shook hands with him yesterday
11 when I saw him.

12 Q. Next, I'd like to see Exhibit 12.

13 Mr. Perez, what's this document?

14 THE COURT: Did you want to admit Exhibit 12?
15 Ms. Diamond, do you want to admit it?

16 MS. DIAMOND: Yes. Yes.

17 THE COURT: Exhibit 12 is admitted with no
18 objection. Go ahead.

19 (Joint Exhibit 12 was admitted into evidence.)

20 A. It appears to be another text, but the numbers are
21 blacked out; meaning, I don't know if it's an e-mail or a
22 text, but it's probably a text. It says (reading), "Did
23 start moving calves off wheat? Need them in a feedyard."

24 This communication happened 1-23-2019, at
25 6:40 P.M. So that is nine days after we were in Happy,

1 Texas.

2 Q. And what does that mean?

3 A. He's still insisting that I move the cattle off wheat
4 and get them into a feedyard. Again, most of the cattle on
5 this cost plus contract are already in the feedlot. The
6 only ones that aren't in the feedyard are the cattle in
7 Happy, Texas, and it's about plus or minus 3,000 of them.

8 MS. DIAMOND: I'd like to enter Exhibit 13.

9 THE COURT: Exhibit 13 is admitted, without an
10 objection from Tyson.

11 MR. FISHER: That's correct, Your Honor.

12 (Joint Exhibit 13 was admitted into evidence.)

13 Q. (BY MS. DIAMOND): What's this text message,
14 Mr. Scherer [sic]?

15 A. It looks like a text message from Mr. Scherer to me,
16 again, on 1-23-2019, 7:26 in the evening, maybe about an
17 hour later. And it says (reading), "Let me know when they
18 start delivering."

19 Q. So he sent you two text messages so far asking when
20 these cattle will be delivered?

21 A. Yes, almost back to back.

22 Q. And what does that mean, "start delivering"?

23 A. I'm pretty sure he's just continuing to ask me to
24 please load them off the pasture and send them to a
25 feedyard.

1 Q. Twice in one day?

2 A. I'm sorry?

3 Q. Twice in one day?

4 A. Yes, ma'am.

5 MS. DIAMOND: I'd like to admit Exhibit 14.

6 THE COURT: Exhibit 14 is admitted, without
7 objection.

8 (Joint Exhibit 14 was admitted into evidence.)

9 A. Thanks so much, whatever you just did. It's nicer if
10 they're bigger.

11 Q. (BY MS. DIAMOND): What's this text message?

12 A. This happened, again, on the 23rd of January of 2019
13 at 7:31 P.M. It reads (reading), "I would agree. Just need
14 them in the record to put them on the books."

15 Q. So what's your understanding of what he's asking in
16 this third text message on January 23rd?

17 A. Apparently, I must have said something to him and he
18 agreed to it.

19 Q. What about the second sentence?

20 A. The second sentence, what it means, plain and simple,
21 to me is "just need them in the yard to put them on the
22 books." So, apparently, Mr. Scherer didn't have these
23 cattle in the books up to that point. Apparently, they
24 weren't anywhere.

25 MR. FISHER: Objection, Your Honor. The witness

1 is speculating at this point as to what Mr. Scherer's
2 agencies thoughts --

3 THE COURT: Right.

4 MS. DIAMOND: I'll rephrase.

5 THE COURT: Okay. I'll sustain. You can
6 rephrase. Go ahead.

7 Q. (BY MS. DIAMOND): What did you interpret this
8 text message to mean?

9 A. I interpret this message to mean, "Hey, if you don't
10 get them in the feedyard, you're not going to get them
11 sold."

12 Q. (BY MS. DIAMOND): I'd like to admit
13 Exhibit 16.

14 THE COURT: Exhibit 16 is admitted, without
15 objection from Tyson.

16 (Joint Exhibit 16 was admitted into evidence.)

17 Q. (BY MS. DIAMOND): Mr. Perez, what's this text
18 message?

19 A. This is a text message -- I guess it's a text message.
20 It's a communication, for sure, from Bob Scherer to me on
21 the 28th of January, 2019. This is five days later. This
22 would be five days later, at 6:45 P.M. And he says
23 (reading), "Any movement on the cattle heading north?"

24 So Happy, Texas, is located in the Texas
25 Panhandle. And we had plans to send these cattle to a

1 feedyard or two in Kansas. And I'm sure that's why he is
2 insinuating -- he's asking if the cattle are going north.

3 Q. So we've now gone through five text messages from
4 Mr. Scherer to you after your meeting in Happy, Texas. What
5 was your thinking in terms of whether or not Bob wanted
6 Zia's natural cattle, Mr. Scherer wanted Zia's natural
7 cattle?

8 MR. FISHER: Objection, Your Honor. I believe
9 Counsel is leading the witness and has been for some time.

10 THE COURT: Your objection is leading?

11 MR. FISHER: Leading her own witness, yes.

12 THE COURT: Okay. I'll overrule that. Go ahead.

13 A. Would you repeat the question, please, ma'am?

14 Q. (BY MS. DIAMOND): We've gone through five text
15 messages from Mr. Scherer to you following your
16 meeting in Happy, Texas. What was your
17 understanding of Tyson's desire for Zia's GAP cattle
18 at this time?

19 A. I think he's turning the gas up and, like, putting
20 pressure on me to get the cattle from Happy to a feedyard.
21 Again, most of the cattle on this list are already in
22 feedyards, but the cattle in Happy are not in feedyards;
23 they're on pasture.

24 Q. What was Zia doing at this time after your meeting in
25 Happy, Texas, in the last part of January?

1 A. Sean and his team were working really hard to get
2 Mr. Scherer a final document on our cost plus contract.
3 Because Sean is a man of very high integrity, and he wanted
4 to make sure that if we told Mr. Scherer that we could do
5 what was on that document that we could, indeed, do what was
6 on that document. So he did not want to waste...any
7 watchful eye on this document. So he had three guys in our
8 office working really hard to make sure that we put this
9 together in a way that he could feel good about it.
10 Because, when we lay this document down, it's all in. And
11 we know that, somewhere down the line, somebody's going to
12 look at these numbers in their finality and say, "You guys
13 are amazing," or "You guys are un-amazing." So the Team Zia
14 was working really hard. All of those days Mr. Scherer was
15 text messaging me, e-mailing me, calling me, Team Zia was
16 working really hard on the numbers.

17 Q. When did you next send Mr. Scherer an updated version
18 of this proposal?

19 A. The cost plus proposal was updated and converted into
20 a contract and sent to Mr. Scherer on February 4, 2019, at
21 11:04 in the morning.

22 MS. DIAMOND: I'd like to enter Exhibit 17,
23 please.

24 THE COURT: Exhibit 17 is admitted, without
25 objection from Tyson.

1 (Joint Exhibit 17 was admitted into evidence.)

2 Q. (BY MS. DIAMOND): Now, the top part of this
3 document is an e-mail from you. Can you tell the
4 jury what you were doing when you wrote to Bob
5 February 4th -- Mr. Scherer, February 4th at
6 11:02?

7 A. Yes, ma'am. Bob had continued to call me and text me
8 daily, weekly, a few times a week, because he really wanted
9 to get these cattle from Happy, Texas, into feedyards. And
10 I told him that until we sent the final version of our cost
11 plus contract that -- and he approved it that we couldn't
12 move any more cattle towards feedyards. Because we were
13 just waiting for that or else we were going to implant the
14 cattle.

15 And so you see there's an attachment here at the
16 bottom and along with a message, "Bob, look this over and
17 let's talk. Sorry, I've had a busy day. It's Tony's
18 birthday. He went snowboarding." Bob knows Tony. Tony is
19 a guy that works in our office that hedges cattle. And when
20 he's gone, it's usually very busy because we spend a
21 tremendous amount of time hedging a lot of those cattle and
22 things like that.

23 Q. What did you mean by "look this over"?

24 A. He told me to send him a final version of our cost
25 plus proposal and that he would approve it. He'd either

1 approve it or not approve it.

2 Q. And this attachment icon that you can see, is this the
3 proposal that we have blown up here (indicating) that is
4 Exhibit 18?

5 A. It is.

6 Q. And so you e-mailed a version of that document to
7 Mr. Scherer on February 4th?

8 A. I did.

9 Q. At 11:02 A.M.?

10 A. Yes, ma'am.

11 Q. And did Mr. Scherer respond to your e-mail?

12 A. Yes, ma'am.

13 Q. Can we zoom in at the bottom of this e-mail?

14 A. Do you --

15 Q. And how did he respond?

16 A. Ms. Diamond, do you want to put this on the ground and
17 show the exhibit (indicating)?

18 Q. That's okay.

19 MS. DIAMOND: If I can approach?

20 THE COURT: That's fine.

21 Q. (BY MS. DIAMOND): How did Mr. Scherer respond
22 to your e-mail?

23 A. He said (reading), "This looks good, get them in a
24 finish yard ASAP, please." And what I thought was
25 comforting is that I sent him the e-mail on February the 4th

1 at 11:02 or 11:04. And Mr. Scherer apparently had a good
2 enough comprehension of what we went over in Happy that,
3 approximately 45 minutes, 47 minutes later, he sent this
4 e-mail right back.

5 So it was very comforting to me that he
6 understood the document well enough to shoot it back to me
7 within 45 minutes and accepting it. And I felt like the
8 contract proposal just got converted into a contract that's
9 consummated.

10 Q. "This looks good," you interpreted to mean Mr. Scherer
11 accepted your proposal?

12 A. Yes, ma'am.

13 Q. What does -- what did "get them in a finish yard" mean
14 to you?

15 A. Yesterday, when I went through the stages of what
16 cattle have to do to work their way on their journey to a
17 packing house, I showed that, from the backgrounder, they
18 need to move into a finishing yard. They have to go through
19 the finishing yard before they can ever get to the processor
20 or packer, in this case, Tyson. So, again, I believe what
21 Mr. Scherer really is saying here is, "I accept your
22 contract. Get the cattle off of wheat pasture and into the
23 feedlot so we can get them finished."

24 Q. Was there any doubt in your mind as to whether
25 Mr. Scherer was accepting Zia's proposal in this e-mail?

1 A. Absolutely not.

2 Q. Was there any uncertainty regarding whether or not Zia
3 and Tyson entered into a binding agreement?

4 A. No, ma'am. I made them an offer of what we wanted to
5 do. And I feel like he accepted that offer verbally in
6 Happy and in writing on this e-mail.

7 Q. How did this cost plus proposal that we've been
8 discussing compare with other proposals or contracts that
9 you've done with Tyson in the past?

10 A. With Bob Scherer, specifically, I've never done
11 anything that looks like this or smells like this or tastes
12 like this.

13 Q. And so would this be more formal or more detailed than
14 other contracts you've done with Mr. Scherer?

15 A. Yes, ma'am.

16 Q. How so?

17 A. Because we seldom have anything except a handshake and
18 some type of agreement between each other. Never in
19 writing. Cryptic pieces of information. Every time I've
20 tried to get a formal contract with Tyson, I run into fierce
21 resistance from Tyson.

22 Q. Why do you think that is?

23 A. I think that any time you have a relationship and you
24 don't have to put anything in writing I think it serves as a
25 beautiful way, if you have to find your way into a

1 courtroom, you find your way into a situation where it's "he
2 said and she said," even though I never dreamt I'd be in a
3 courtroom with Tyson after 20 years of being married to
4 them.

5 Q. Did you ever have a formal written contract with
6 anyone at Tyson?

7 A. No, ma'am.

8 Q. How does this cost plus proposal compare with the
9 agreements you've had with anyone at Tyson in the past
10 20 years?

11 A. This is a quantum leap towards transparency, towards
12 authenticity, towards trying to make it very clear what we
13 have to offer to them and whether they want what we have to
14 offer. And really, what we're trying to do in this document
15 is add more formality to what we do. And you can see by
16 these proceedings that they're kicking and screaming all the
17 way, because they don't want formality.

18 And the point here is, is that in a world where
19 grain is \$7 a bushel and gasoline is \$6 a gallon and beef is
20 very hard for people to afford in the store, it's time for
21 us, as an industry, to be accountable for taking these
22 resources and putting them to good use. And we feel we have
23 a duty to do what's right with these resources when there's
24 people that are starving to death in other parts of the
25 world.

1 So this document really embodied the whole idea
2 of making sure that we put it on Tyson's back and, if they
3 want to mismanage cattle and fall asleep on scheduling and
4 things like that, it's up to them. If they want to
5 mismanage it, they can mismanage it. Because when I go to
6 Whole Foods to buy things -- because there's two of them
7 right by my house -- I walk in -- I walk in there because I
8 want to buy organic apples, organic bananas. I want to buy
9 pork that's been raised under the GAP label or beef that's
10 been raised under the GAP label. I'm doing that, I'm paying
11 those extra costs, because I want to feel good about the
12 food that I buy that I'm putting into my body. I want to
13 feel good about how that food is being raised; if it's
14 healthy for the planet, if it's not healthy for the planet.
15 And most of the people I see in the parking lot have a
16 hybrid car or an electric car. These are people that are
17 individually trying really hard to do what they can to be
18 friendly to the planet. And that's just something, a really
19 yucky feeling, about knowing that all these consumers are
20 going into Whole Foods because they think this is a
21 feel-good thing and they can feel good about eating this
22 food, only to find out that my good friend, Bob Scherer,
23 takes the cattle out of the feedlot whenever he feels like
24 it. And I don't think that's right.

25 Q. After you got this e-mail on February 4th from

1 Mr. Scherer saying, "This looks good, get them in a finish
2 yard," did you move your GAP cattle into a feedyard?

3 A. We started moving cattle from Happy, Texas, towards
4 feedyards to finish.

5 Q. Did you implant these cattle?

6 A. We didn't implant these cattle because Mr. Scherer had
7 to have them. He wanted them. He couldn't live without
8 them.

9 Q. After Mr. Scherer sent you this e-mail on
10 February 4th, did you speak with him by phone?

11 A. Yes, ma'am.

12 Q. That day?

13 A. Whether we spoke that day -- you know, we spoke on the
14 phone often. That's really the major mode of us talking was
15 actually on the phone, not through text or e-mail or
16 anything else.

17 Q. Do you recall the first phone conversation you had
18 with Mr. Scherer after he sent this e-mail on
19 February 4th?

20 A. Yes, ma'am.

21 Q. And what happened on that call?

22 A. Mr. Scherer said, "Get the cattle off wheat pasture
23 and into the feedyard. I need them badly. Please move them
24 from wheat; get them into the feedyard."

25 Q. Now, in this e-mail, in his response on

1 February 4th, is there anything where Mr. Scherer says
2 he's only going to pay Nebraska weighted average?

3 A. No.

4 Q. Is there anything in this e-mail saying that only one
5 or two of these columns looks good?

6 A. No, ma'am. Mr. Scherer, to this date, has never told
7 me that anything about this document looks good or bad.
8 He -- we went through the document in Happy. He got the
9 document again here on February the 4th. Obviously, he has
10 no problem with it. And this document -- I'm sure we'll
11 talk about it at some point -- was sent to him many times.

12 Q. Is there anything in this e-mail from Mr. Scherer on
13 February 4th that says Tyson would never enter into a cost
14 plus agreement with Zia?

15 A. No.

16 Q. When you spoke with him soon after this e-mail was
17 sent, did Mr. Scherer tell you Tyson would never agree to a
18 cost plus agreement with Zia?

19 A. I'm sorry, ma'am?

20 Q. When you spoke on the phone, the first conversation
21 after you got this e-mail from Mr. Scherer, did Mr. Scherer
22 tell you Zia and Tyson could never enter into a cost plus
23 agreement?

24 A. No, ma'am.

25 Q. Did Mr. Scherer tell you Tyson would never pay for the

1 cost of calves?

2 A. Not then, he didn't.

3 Q. Did Mr. Scherer tell you he would only pay you the
4 Nebraska weighted average?

5 MR. FISHER: Objection, Your Honor. Counsel is
6 leading the witness.

7 THE COURT: Overruled.

8 A. Mr. Scherer did not say anything about the Nebraska
9 weighted average to me or anything else about any other kind
10 of deal, any other kind of way of sorting this out. He
11 didn't say a word. As a matter of fact, the longer that we
12 went into the spring -- we started out in January, in Happy;
13 then, in February, Mr. Scherer, as you can see has no
14 problem sending me e-mails, no problem sending me text
15 messages, and he had no problem talking to me on the phone,
16 but for the first time since I've known him in five years,
17 crickets.

18 Q. (BY MS. DIAMOND): On February 4, 2019, when
19 you received this response from Mr. Scherer, "This
20 looks good, get them into the feedyard," if he had
21 told you he was only going to pay Nebraska weighted
22 average, would you have not implanted your -- would
23 you have not implanted your cattle?

24 A. We had a plan in place to implant the cattle. We had
25 already spoken to a couple of other packers. We had a

1 couple of feedyards that we feed a lot of conventional
2 cattle in, and they were ready to go, they had space. And,
3 basically, we were just waiting for Bob to decide if he
4 wanted the cattle, needed the cattle, was going to take the
5 cattle under our terms. Because, if he was, we weren't
6 going to send them to any other feedyards. We weren't going
7 to make arrangements with any other packers. They were his
8 to turn down.

9 Q. And what would you have done on February 4th if
10 Mr. Scherer said he would not agree to a cost plus
11 agreement?

12 A. I would have taken the cattle and implanted them and
13 moved on.

14 Q. What would you have done if Mr. Scherer said these
15 terms were too uncertain to be a binding proposal and
16 agreement?

17 A. I would have taken the cattle and I would have
18 implanted them, and we would have hedged them. Very
19 important. We wouldn't be at the car lot driving out with a
20 \$60,000 pickup and no insurance on them. That's not
21 somebody -- that's not something an intelligent person does.

22 Q. On February 4th, when you received this e-mail,
23 could Zia still have done that without a loss? You could
24 have still made these natural cattle conventional cattle?

25 A. If we would have hedged the cattle on February the

1 4th, the cattle would have made money. They would have
2 made more money than messing around over here trying to make
3 sure that Bob is happy and has cattle.

4 Q. But you didn't take that course?

5 A. Ms. Diamond, in the cattle business, you have one
6 thing: You have your reputation. And Bob had counted on
7 these cattle, and we didn't want to let him down. But we
8 couldn't do that by taking our own life and our own survival
9 to help him. But if we could make a little margin and help
10 him do what he's trying to accomplish, then we both win. It
11 may not be a grand-slam win, but it's a win. So we wanted
12 to honor the 20-year relationship and try to get the cattle
13 to him.

14 Q. On February 4th, 2019, when you received this
15 response from Mr. Scherer, "This looks good," were you
16 surprised that Tyson agreed to a cost plus agreement?

17 A. Not at all.

18 Q. Why is that?

19 A. Because we went over it in Happy, Texas, and he --
20 after I was in Happy, he saw -- you saw that he really
21 wanted me to get the cattle moving into feedyards, so, you
22 know, there should be no reason in the world why he changes
23 his mind. But, if he does, he still had one more chance to
24 do what he could do and needed to do and wanted to do
25 without really doing any harm to us.

1 Q. Was that when you sent this updated proposal on
2 February 4th?

3 A. Yes, ma'am.

4 Q. And did he take that last chance to refuse your
5 proposal?

6 A. On the contrary. It looks to me like he was very
7 happy to have them.

8 MS. DIAMOND: I'd like to next admit Exhibit 20.

9 THE COURT: Exhibit 20 is admitted, without
10 objection from Tyson.

11 (Joint Exhibit 20 was admitted into evidence.)

12 Q. (BY MS. DIAMOND): Mr. Perez, what is this text
13 message?

14 A. It is a text message because I see the phone numbers.
15 It happened on the 5th of February. This would be the
16 next day, at two o'clock in the afternoon. It says
17 (reading), "The cattle have got to be placed in feedyards or
18 I can't take them. As of today, May 15 harvest is only
19 99 days on Bovamine Defend at a finish yard. Please get
20 them placed."

21 Q. What did you understand this text message to mean with
22 regard to the urgency that Tyson needed Zia's GAP cattle?

23 A. It meant, now that we have a contract in place, he's
24 going to start turning the gas up under me really hot to get
25 the cattle moving. And you know what Mr. Scherer doesn't

1 remember is that, when he starts talking about Bovamine
2 Defend, Bovamine Defend is a probiotic that helps the
3 digestive system create lactic acid, which, in turn, reduces
4 the amount of E. coli that you find on the beef that's in
5 these cattle. We feed Bovamine Defend to all of our cattle
6 all the time. So there is no restriction of how many days
7 they need to have Bovamine Defend because all of those
8 cattle that are in all these other locations have it. And
9 even the Happy Pasture cattle have it on pasture.

10 Q. Was Zia already performing under the cost plus
11 agreement?

12 A. Absolutely.

13 MS. DIAMOND: I'd like to next enter Exhibit 22.

14 THE COURT: Exhibit 22 is admitted, without
15 objection from Tyson.

16 (Joint Exhibit 22 was admitted into evidence.)

17 Q. (BY MS. DIAMOND): Mr. Scherer, what's this
18 text message -- I'm sorry. Mr. Perez, what's this
19 text message?

20 A. The text message is from Mr. Scherer on the 15th of
21 February. And it says -- at 4:06 in the afternoon. And it
22 says, (reading), "We need the bulk in May."

23 Q. What does that mean?

24 A. It means to me that he rolled out of bed, looked at
25 his schedule and said, "Oh, my God, we don't have enough

1 cattle for May. We need to pull all the cattle to May."

2 And again, as I testified yesterday, the whole
3 reason we created the cost plus contract is because we are
4 handling snowflakes. We're not handling boxes of tennis
5 shoes. A snowflake is going to do what it's going to do
6 because it's a living, breathing organism. And there's no
7 way to see if we can get a hundred percent of all these
8 cattle into the May category. But if we're making \$125 a
9 head, Bob Scherer can do whatever his heart desires. He
10 can --

11 Q. So if he wants to pick them up early?

12 A. If he wants to pick them up early, if he wants to pick
13 them up late, it's on him, not us.

14 Q. Is that because Tyson would be paying for the cost?

15 A. That's correct.

16 Q. For the cost of the calves?

17 A. That's correct. And this is exactly why we created
18 the cost plus model, because we know how Bob Scherer is.
19 And we know that regardless of when the snowflakes are ready
20 to be consumed happens that Bob Scherer is going to do
21 whatever he feels like he's got to do to keep the kill
22 going. That's his job. He has to get so many boxes of
23 tennis shoes in the door every day.

24 And we do something different: We take
25 snowflakes and we create them and develop them into

1 beautiful beef animals for the purposes of food.

2 MS. DIAMOND: I'd like to next admit Exhibit 28.

3 THE COURT: Exhibit 28 is admitted, without
4 objection from Tyson.

5 (Joint Exhibit 28 was admitted into evidence.)

6 Q. (BY MS. DIAMOND): Mr. Perez, what is this text
7 message?

8 A. The text message says (reading), "Damn good-looking
9 cattle, even on a rainy, crappy day."

10 Q. And what did this mean?

11 A. Well, it sounds like Mr. Scherer had a real fun day in
12 Kansas. And that happened on the 14th of March of 2019,
13 at six o'clock in the evening.

14 Q. What was in Kansas?

15 A. I am sure he went to High Choice Feeders or
16 someplace -- no, I think he went to High Choice that day,
17 but, regardless, when somebody says, "Damn good-looking
18 cattle," damn good-looking cattle.

19 Q. Is that Zia's cattle he's referring to?

20 A. Yes, ma'am.

21 Q. This is the cattle that Zia was feeding under the cost
22 plus agreement?

23 A. More than likely, some of these cattle came from Happy
24 and, more than likely, some of these cattle that he looked
25 at are some of the ones you see at High Choice on this

1 board. But, as a cattle person, I guess you're not going to
2 get a much higher compliment from a guy like Bob Scherer. I
3 think Bob loved the cattle. I think he loved them at Happy.
4 I think he loved them this day in Kansas.

5 Q. And you told us yesterday how proud you are of Zia's
6 cattle.

7 A. I am so proud of my family and proud of our cattle.
8 We work very hard to have a very transparent, authentic
9 process when it comes to beef production.

10 Q. Did you send further updates to the cost plus proposal
11 after Bob, Mr. Scherer, accepted it on February 4th?

12 A. Yes, ma'am.

13 Q. I'd like to --

14 A. Sean and his team were constantly -- this was a 24/7,
15 365 "let's make sure that we keep Bob very aware of
16 everything that's going on."

17 Q. And why did you want to do that?

18 A. Because we want to do what's right by Bob.

19 MS. DIAMOND: I'd like to admit Exhibit 133,
20 please.

21 THE COURT: Exhibit 133 is admitted, without
22 objection from Tyson.

23 (Joint Exhibit 133 was admitted into evidence.)?

24 A. Oh, thanks for blowing it up.

25 Q. (BY MS. DIAMOND): It looks like this is an

1 e-mail and an attachment.

2 Can you tell us what this e-mail is, Mr. Perez?

3 A. It's an e-mail from me on 2018 -- 2019, so
4 February 18, 2019, at 4:39 in the afternoon. And the
5 subject is (reading), "cattle in highlighted have moved to
6 High Choice, forward, corrected cost plus model 2018-19."

7 Q. That's the attachment?

8 A. (Reading), "Cost plus model attachment, corrected PDF,
9 untitled attachment 00013.htm." The body of the e-mail
10 says, "Circle B's moved this week to Beef City."

11 Q. What's Beef City?

12 A. Beef City is a feedlot that we finish cattle in.

13 Q. So Zia was moving its GAP cattle to the feedlot, and
14 you're telling Mr. Scherer; is that correct?

15 A. Ma'am, the Circle B cattle are some of the most famous
16 cattle in the world. And they are out of Custer, Montana.
17 The Borman family. Astronaut Borman owns this ranch. And
18 to be able to buy these cattle and have them in our stream
19 of cattle is absolutely an honor, to buy these cattle from a
20 great American hero. And Bob knows the cattle because I've
21 sent the cattle to him many times. And he'd know that there
22 was a couple of thousand of these cattle, more than likely,
23 headed towards Beef City. And this would be significant
24 because it's a large percentage of the cattle that are here.

25 Q. So Zia was getting its cattle --

1 A. Yes, ma'am.

2 Q. -- in the feedyard?

3 Can we go to the second page and zoom in on the
4 bottom box, please.

5 So, Mr. Perez, what is this document here?

6 A. You know, honestly, I believe this is the attachment
7 that was in that e-mail that we just talked about, but I
8 really can't tell.

9 Q. And why would you be sending updated...

10 A. Do you mind scrolling down a little bit? That's
11 actually up. Thank you.

12 Can you scroll just a little bit over to the
13 left? Thank you. Please and thank you.

14 Q. Why were you sending updates to this cost plus
15 document?

16 A. Because we wanted to make sure that Bob could see what
17 was happening, like the articulation of the cattle movement
18 from a ranch to a grower, a backgrounder, a wheat pasture,
19 or into a finish yard.

20 Q. Did this make the cost plus proposal that you sent
21 Mr. Scherer on February 4th any less certain?

22 A. It actually makes it more certain. And all costs are
23 updated, all -- all manner of metrics in this document are
24 updated. But if you go to the bottom of the document, the
25 reason that this square is at the bottom is it, again,

1 always aggregates everything so that we properly reflect
2 what he can count on for cattle coming out in certain time
3 periods, if he takes them out in certain time periods, and
4 how many head and what their size might be, what their cost
5 is per pound, and what their cost is per head.

6 Q. Do you recall if Mr. Scherer responded to this e-mail
7 saying that there was no cost plus agreement with Tyson?

8 A. I recall that it was crickets. No response.

9 Q. And this is on February 18th?

10 A. I believe so. I don't remember, honestly, whether he
11 responded or not. He certainly didn't respond negatively.

12 Q. What was your understanding with regard to whether or
13 not Tyson was honoring the cost plus agreement Mr. Scherer
14 had made on February 4th?

15 A. I never worried about it again. Bob looked at it. We
16 talked about it till we were blue in the face. He looked at
17 the cattle, and I understood very clearly that he wanted me
18 to get the cattle from Happy into a feedyard.

19 Q. And that's what Zia did?

20 A. Yes, ma'am.

21 MS. DIAMOND: I'd like to next admit Exhibit 135,
22 please.

23 THE COURT: Exhibit 135 is admitted, without
24 objection from Tyson.

25 (Joint Exhibit 135 was admitted into evidence.)

1 Q. (BY MS. DIAMOND): Mr. Perez, what is this
2 document starting with the e-mail on the first page?

3 A. It's an e-mail March 4, 2019, at 2:15 in the
4 afternoon.

5 Q. What was the subject?

6 A. It was myself to Bob Scherer. Subject is (reading),
7 "Updated list, forward, 2019, March 4, cost plus update,
8 cost plus model, attachment 3-4-19 PDF." And this was
9 forwarded to me from Mike Rogers. He's our cattle inventory
10 manager. And he says, "Narciso, attached is the updated
11 cost plus model. The yellow highlighted cattle are the
12 movements from pasture to feedyard. Thanks, Mike."

13 Q. And you were sending that to Mr. Scherer?

14 A. That's what Mike Rogers is telling me.

15 Q. And you forwarded that e-mail to Mr. Scherer?

16 A. I believe so, yes. I can only see that I forwarded
17 it. I can't say that he actually got it or anything here.
18 So it must be lower in the e-mail.

19 MS. DIAMOND: Ms. Gallagher, can you zoom in to
20 the second page, the highlighted columns?

21 Q. And, Mr. Perez, do you know what these highlights
22 refer to?

23 A. These are -- if you look to the far right, it has a
24 "ranch name." And if you work your way from the right --
25 sorry, far left. If you work your way from the far left

1 column, right, the next column tells you -- so the first
2 column tells you the ranch of origin; again, going back to
3 this, the cow-calf operation. The next column tells you
4 which feedlot they went to. The next column tells you, to
5 the right, whether they were steers or heifers. And the
6 next column tells you what head count went.

7 Q. Did Mr. Scherer respond that there was no cost plus
8 agreement with Tyson when you sent this update on
9 March 4th?

10 A. If my mind serves me correctly, he didn't respond, at
11 all. He didn't respond about a Nebraska weighted average.
12 He didn't respond about anything.

13 Q. Was there any doubt that Zia and Tyson had entered
14 into a binding cost plus agreement on March 4th?

15 A. Absolutely not. And the reason we keep sending
16 updates is, just like your credit card statements, we want
17 to make sure we always keep Bob knowing what's going on so
18 he doesn't get out of bed one day and freak out because the
19 cattle are here instead of there or there instead of here.
20 He shouldn't have to wonder what's happening with the cattle
21 he bought. We wanted to be very transparent about that.

22 Q. Because Tyson was paying the costs?

23 A. That's correct.

24 Q. Does this March 4th cost plus update make the
25 February 4th cost plus agreement any less certain?

1 A. No. The further you march down the road of time, the
2 more exact this document gets; the more comfort it should
3 give a buyer, unless the buyer doesn't want to be
4 comfortable.

5 MS. DIAMOND: I'd like to enter Exhibit 149.

6 THE COURT: Exhibit 149 is entered without
7 objection from Tyson.

8 (Joint Exhibit 149 was admitted into evidence.)

9 Q. (BY MS. DIAMOND): Mr. Perez, what is this
10 document?

11 A. May 10th, 2019, I send him an e-mail. Looks like I
12 copied his boss. The subject was (reading), "Forward
13 2019-05-10 cost plus update; attachments: Cost plus model
14 5-10-19, Jul-Sept.pdf, cost plus model April." It looks
15 like I might have sent all of the cost plus models that we
16 sent, like all of the updates. I might have included them
17 on this e-mail.

18 (Reading), "Bob, here is our short list after
19 your buyers have scheduled the majority of the cattle.
20 Thanks, Narciso."

21 Q. What does that mean, "scheduled the majority of the
22 cattle"?

23 A. This means that his buyers have visited every facility
24 where we have these cattle. And they were working with
25 feedyard managers to try to get the cattle scheduled in to

1 harvest them.

2 Q. So this is May 10, 2019. Do you think that Tyson had
3 started talking some of these GAP cattle yet?

4 A. I feel pretty certain that some of these cattle were
5 already moving, yes.

6 Q. Because Mr. Scherer told you they needed the bulk in
7 May?

8 A. Again, the reason that I feel pretty confident that
9 some of these cattle were moving is because his buyers
10 started looking at the cattle as soon as we consummated the
11 deal on February the 4th.

12 Q. Did Mr. Scherer respond to this e-mail saying, "There
13 is no cost plus agreement with Tyson"?

14 A. I can't see the rest of the e-mail, but I'm assuming
15 that...

16 Q. Just based on your knowledge, Mr. Perez.

17 A. I don't think him or his boss, Justin Nelson,
18 responded to anything.

19 MS. DIAMOND: I'd like to next enter Exhibit 36,
20 please.

21 THE COURT: Exhibit 36 is admitted, without
22 objection from Tyson.

23 (Joint Exhibit 36 was admitted into evidence.)

24 Q. (BY MS. DIAMOND): Mr. Perez, what is this
25 document?

1 A. I've got a blue screen, so...

2 Q. How often around -- approximately, based on your
3 recollection, would you be sending Mr. Scherer these
4 updates?

5 A. Every few weeks. Once a month, on the outside. Every
6 two to three weeks. The idea was to keep all updates
7 happening and keep Mr. Scherer informed in real small
8 increments of time, so that he knew where we were at all
9 times.

10 Q. And can you describe the responses from Mr. Scherer
11 between February and May?

12 A. Through e-mail or telephone?

13 Q. In any -- in any form.

14 A. We talked on the phone a few times about, you know,
15 "Is Jake Bach going to look at the cattle at Prewitt's? Is
16 Rich Hoff going down to High Choice?" So, you know, we had
17 a few discussions that are going to be discussions that were
18 relating to his buyers.

19 Q. And at any time during those discussions, did
20 Mr. Scherer say he can't pay the costs?

21 A. No, ma'am.

22 Q. At any time during these discussions, did he say that
23 Tyson would not ever agree to a cost plus arrangement with
24 Zia?

25 A. No.

1 Q. Or a cost plus agreement with Zia?

2 A. No, ma'am, he never said that.

3 Q. Did he ever say that Tyson would only pay you the
4 Nebraska weighted average?

5 A. The Nebraska weighted average never came up.

6 Q. So what is this Exhibit 36, Mr. Perez?

7 A. This is a 5-22 e-mail from me to Bob (reading), "Cost
8 plus model Jul-Sept.pdf, cost plus model, April-June.pdf,
9 lot Zia 215, invoice 11777 redone.pdf." This is an e-mail
10 sent from Mike Roger, one of our people, to me. (Reading)
11 "Narciso, attached is the updated cost plus model and the
12 Prewitt Land and Livestock invoice for 83 head sacrificed on
13 5-18-19. There is now a second page on the April-June
14 model. The second page is a comparison for the cattle that
15 have already shipped. On the comparison page, the yellow
16 highlighted ranch names are the two sets projected for May
17 shipping."

18 Q. Can you explain to us what's going on in this e-mail
19 from Mike Rogers that you forwarded to Mr. Scherer on
20 May 22nd?

21 A. It looks like, in May, we were shipping cattle
22 probably out of Fairview Feeders, which is owned by Prewitt
23 Land and Livestock. And so we had the invoices, the cost
24 plus invoices here, and then it's talking about a
25 highlighted -- an updated cost plus model.

1 Q. And what would the Prewitt Land and Livestock invoices
2 refer to?

3 A. The Prewitt Land and Livestock invoices would have --
4 I'm sure the attachments are somewhere, but they would have
5 had, again, the cattle cost, the freight, the feed, the
6 interest; the death loss would have been taken out -- and,
7 if my mind serves me correctly, at Prewitt Land and
8 Livestock, we only had a 1½ percent death loss, so we
9 actually beat our projections -- and then our margin.
10 That's what should have been on that invoice.

11 Q. And that invoice, that would be needed to be paid by
12 Tyson under the cost plus agreement?

13 A. Yes, ma'am.

14 Q. Because those are the costs?

15 A. Yes, ma'am.

16 Q. So in May, by May 22nd, Tyson was already picking up
17 or taking some of these GAP cattle that are listed in the
18 cost plus agreement?

19 A. Yes, ma'am.

20 Q. And in May, Zia started invoicing Tyson for the cattle
21 picked up under the cost plus agreement?

22 A. That is correct.

23 MS. DIAMOND: I'd like to next enter Exhibit 151,
24 please.

25 THE COURT: Exhibit 151 is admitted, without

1 objection from Tyson.

2 (Joint Exhibit 151 was admitted into evidence.)

3 Q. (BY MS. DIAMOND): Mr. Perez, who is this
4 e-mail from?

5 A. This is from Robert Scherer.

6 Q. What is the date of this e-mail?

7 A. 5-24-19 -- 5-25-2019.

8 Q. And what day of the week is that?

9 A. That is Saturday.

10 Q. And what's the subject of this e-mail?

11 A. (Reading) "Subject, cattle invoice 5-24-19."

12 Q. And what about attachments?

13 A. The attachments (reading), "Cattle invoice
14 5-24-19.pdf."

15 Q. What does that invoice refer to, or what do you think
16 that refers to?

17 A. It's definitely a cattle invoice. Again, it's going
18 to have cattle feed, freight, it's going to have death loss,
19 it's going to have our margin. And it's probably referring
20 to the cattle that we just talked about in the previous
21 e-mail.

22 Q. So this is an invoice for cattle that was sent to
23 Tyson?

24 A. Correct.

25 Q. Including cost of cattle under the cost plus

1 agreement?

2 A. Yes, ma'am. And in there would have been, you know,
3 all the exact freight bills and all the feed bills, exact
4 everything.

5 Q. And this would have been invoiced after Zia delivered
6 its GAP cattle, or at least some of its GAP cattle to Tyson?

7 A. Correct.

8 Q. After Zia already performed under the cost plus
9 agreement?

10 A. That is correct.

11 Q. After Zia fed these cattle as natural cattle or GAP
12 cattle instead of implanting them?

13 A. Yes, ma'am, that's correct.

14 Q. And what does the text of this e-mail from Mr. Scherer
15 say?

16 A. The text from Mr. Scherer?

17 Q. The writing of it, what does he write? What does the
18 e-mail say?

19 A. Yes, ma'am. (Reading) "I'm not paying for the cost of
20 calves. That's not what we do. What are you trying to do
21 here?"

22 Q. What's going on in this e-mail?

23 A. I'm dying a thousand deaths because we have turned
24 handsprings trying to be transparent, keep Mr. Scherer
25 updated, keep Mr. Scherer aware of everything that's going

1 on. Now, we start to send in invoices for the cattle that
2 we grew under this contract and we're super transparent.
3 All of the invoices from all of the vendors that did work
4 for us, we put in there, so that Tyson wouldn't think that
5 we worked the invoices up or had an extreme death loss or
6 something that somebody that you can't trust would do.

7 And the other thing that's going on is, is that
8 this entire inventory of cattle that we could have implanted
9 in January or February, they're now in the web of Tyson. So
10 them being the only person that buy GAP cattle in these
11 quantities, the only person in the United States that buys
12 these kind of cattle, we're stuck. And Mr. Scherer is
13 refusing to pay for them.

14 THE COURT: Would this be a good time to take a
15 break for our midmorning break?

16 MS. DIAMOND: Yes, Your Honor.

17 THE COURT: All right. We're going to take a
18 15-minute recess and then we'll continue with the direct
19 testimony of Mr. Perez.

20 All rise for the jury.

21 (Jury not present.)

22 All right. We'll be back in 15 minutes.

23 Mr. Fisher, I'm just admitting the exhibits
24 unless you say something.

25 MR. FISHER: That's fine, Your Honor.

1 THE COURT: If you don't want something, say
2 something.

3 MS. DIAMOND: Your Honor, Mr. Fisher, why don't
4 we make an agreement each morning that we'll give each other
5 a copy of the exhibits for that day and stipulate to it to
6 make it easier, if that would be okay?

7 THE COURT: Yes. Give me the numbers you
8 stipulate to, and I'll admit them all. But if we're having
9 to do it in live court, we have to put something on the
10 record that Tyson or that Zia is not objecting.

11 MS. DIAMOND: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. FISHER: Thank you.

14 (A recess was taken.)

15 THE COURT: Thank you. You may be seated.

16 Are you ready for the jury?

17 MS. DIAMOND: Yes, Your Honor.

18 (Discussion off the record.)

19 (Jury present.)

20 THE COURT: Thank you. You may be seated.

21 Ms. Diamond, you may continue your direct exam.

22 MS. DIAMOND: Thank you, Your Honor.

23 Q. (BY MS. DIAMOND): Mr. Perez, we were speaking
24 about Exhibit 151. Can you just tell us again your
25 reaction once you saw this e-mail.

1 A. Yes, ma'am. Again, it's an e-mail from Bob Scherer to
2 me on May 25th, 2019, at 6:37 in the morning. He says
3 (reading), "I'm not paying the cost of calves. That's not
4 what we do. What are you trying to do here?"

5 Q. And what did you do in response to this e-mail?

6 A. I'm pretty sure I called him on the telephone. But
7 the bottom line is, is that, at the end of a long journey of
8 trying to create -- thousands of hours of people keeping
9 track of costs and making a mammoth effort to be transparent
10 and communicating fluidly and amply, what I see is, is that,
11 all of a sudden, the game shifted and all of our cattle are
12 stuck, \$16 million worth of cattle are stuck in some
13 situation that is not going to be pretty.

14 Q. And why couldn't you just sell the rest of the cattle
15 to other suppliers?

16 A. So, to start with, we have a commitment to send these
17 cattle to Tyson because they bought them on the cost plus
18 contract. So, yes, could we sell the cattle to someone
19 else? Yes. What type of person would buy these cattle? A
20 normal conventional packer would be happy to buy these
21 cattle. They'd love these cattle, but they would pay
22 several hundred dollars a head less because they are a GAP
23 natural cattle, audited program, third-party verified cattle
24 that in this case the largest supplier of GAP cattle in the
25 United States to Whole Foods is Tyson. And there's not

1 really any other place to go with them.

2 So, after trying to get ahold of Mr. Hueser,
3 Mr. Nelson, and Mr. Scherer, I reached out to the folks that
4 I had a previous relationship and asked them what to do.

5 Q. That's Mr. Brandenburg and Mr. Bass?

6 A. Yes. And Mr. Bass said, "Well, two wrongs don't make
7 a right, but two Wrights designed, built, and flew the first
8 airplane. You stand up to your side of the contract. You
9 deliver the cattle and Tyson will do what's right. And if
10 they don't do what's right, then sue them. But it's not
11 going to fix anything by two people not honoring the
12 contract. Call Kevin Hueser, get him on the phone, talk to
13 him, work it out."

14 Q. And you testified about that yesterday, but were you
15 able to work it out with Tyson?

16 A. I called Kevin Hueser many times. I called Justin
17 Nelson many times. I called Bob a couple of times. And it
18 was pretty clear on what Bob was thinking with his e-mail.

19 Q. And after you got this e-mail from Mr. Scherer on
20 May 25th, did Tyson still deliver some of the GAP
21 cattle -- did Zia still deliver some GAP cattle to Tyson?

22 A. Yes, ma'am, Zia delivered a number of cattle to Tyson
23 and Tyson received a number of cattle. As a matter of fact,
24 Zia tried to deliver the entire contract, and Mr. Scherer
25 started turning cattle down and not taking cattle even

1 though they were on that document that was our contract.

2 Q. Did Tyson ever pay you the full amount owed under the
3 cost plus agreement?

4 A. No, ma'am, they did not.

5 MS. DIAMOND: I'd like to next enter Exhibit 39.

6 THE COURT: Exhibit 39 is admitted, without
7 objection from Tyson.

8 (Joint Exhibit 39 was admitted into evidence.)

9 Q. (BY MS. DIAMOND): Mr. Perez, are you copied on
10 this June 6th, 2019, e-mail, subject: Zia Ag?

11 A. No, ma'am. It's an e-mail written from Bob Scherer to
12 all of his buyers everywhere we have cattle, and his boss.

13 Q. So --

14 A. And this is happening on June the 6th. So, February
15 the 4th, we made a deal, and he agreed to it. January the
16 14th, we looked at cattle, and he agreed to it. And we're
17 talking February, March, April, May, June, 5 times 30,
18 150 days later, all of a sudden, Mr. Scherer is going to
19 pull a CYA move. And he says to his buyers (reading),
20 "Yesterday, I received an e-mail from one of our suppliers
21 who finish cattle for Zia Ag stating to send all feed bills,
22 cost of cattle, all incremental to Tyson in an invoice form.
23 We do not have any such agreement with Zia Ag. Let me
24 repeat this, we do not have any such agreement. We will
25 continue to pay for the cattle as we always have using the

1 Nebraska weighted average and the agreed-upon premiums. I
2 want to make sure the checks go directly to the finish yards
3 so they have complete payment for all their costs. Any
4 questions, please feel free to call me on my cell."

5 Q. What's your understanding of what is going on in this
6 e-mail?

7 A. Super easy: Mr. Scherer is trying to cover his
8 tracks. If he would have written an e-mail like this on
9 February the 4th, I might understand it, but -- and -- but
10 to write it on June the 6th -- and why didn't he include
11 Zia in this? The one entity that is impacted the most is
12 Zia and it's not on the e-mail. Why? Then everybody could
13 get on the same page. But, clearly, he has woven his way
14 around either Tyson's employees or Zia's team to suit his
15 needs.

16 Zia -- in the first line, he says (reading),
17 "Yesterday, I received an e-mail from one of our
18 suppliers" -- big surprise -- "cattle for Zia Ag sending all
19 feed bills" -- again, transparency, exact poof,
20 authentication that we spent this money. These feed bills
21 do not have anything in them for markup. We added \$125.
22 Transparent.

23 "We do not have any such agreement with Zia Ag."
24 I'm pretty sure he didn't attach the cost plus document that
25 is our contract that was sent on February the 4th to those

1 guys. Why didn't he do that?

2 "Let me repeat this: We do not have any such
3 agreement." Okay. I heard you the first time. You're
4 backing out of a contract.

5 "We will continue to pay for cattle as we always
6 do using Nebraska weighted average" -- "as we always do"?
7 As we've determined here, I have made so many deals with
8 Tyson, I don't even remember all the deals I made with them.
9 One of them was Nebraska weighted average, and that's a deal
10 I made not with Mr. Scherer but with Mr. Gerber.

11 "...and the agreed-upon premiums." I didn't
12 agree to any premiums. Anywhere.

13 "I want to make sure the checks go directly to
14 the finish yards, so we have complete payment for all their
15 costs." What's going on here is, is that he is like kissing
16 people's posterior, because Zia didn't ask for anyone to get
17 the money except for the finishing feedyards. That's who we
18 requested that Tyson pay: The finishing feedyard. Very
19 disrespectful and really just heart-crushing.

20 "Any questions, please feel free to call my
21 cell." I love it. They can get him on the cell phone, but
22 I can't.

23 Q. What would you have done if you saw this e-mail on
24 January 14th, 2019?

25 A. So simple: I would have implanted the cattle and sold

1 them somewhere else. We're talking about a \$16 million
2 deal. Again, that's 75 houses in Las Cruces that cost
3 \$200,000 each. That's a huge amount of money.

4 Q. What if you had seen this e-mail on February 4th,
5 2019?

6 A. The cattle would have been implanted. Other packers
7 would have been happy to have the cattle as implanted
8 cattle. The cattle would have done just fine. We would
9 have bought the insurance policy for that car in the parking
10 lot that we bought. We would have hedged the cattle, we
11 would have implanted them. Bob and us would have still been
12 friends. That would have been no problem.

13 Q. You testified yesterday that Zia's involvement in the
14 natural cattle business has been decreased. What's the
15 state of the beef industry now?

16 A. Well, I'd like to think that, no matter what kind of
17 spat is going on between the Tysons of the world and the
18 Zias of the world, that beef is still one of the most
19 wholesome and healthy and safe products for us to feed our
20 families. It's a really, really high source of protein
21 that's a very high-quality source of protein. And the
22 beautiful thing about cattle is they have a rumen. The
23 rumen is designed to take forage on hillsides that have
24 cactus and rocks and convert it into tissue that's
25 delicious.

1 However, with the virus, we saw that there was
2 problems in supply. And ranchers -- with the war in Ukraine
3 and global climate problems, the cost of grain has gone up;
4 the cost of fuel has gone up; our food system is in --
5 really stressed out. It doesn't mean that the food isn't a
6 better quality than it's ever been and you can count on it.
7 The only thing is it's expensive, you know, because it
8 consists of labor, fuel, feed. These are all things that
9 have gone up. And the beef industry is in a critical state.
10 We are coming around the corner where companies like Tyson
11 and the other people that kill cattle that harvest cattle,
12 they're going to struggle to find enough cattle to keep
13 their packing houses going because the drought has consumed
14 a large percentage of our brood cow herd, that first
15 category that we were talking about.

16 And while we're in this courtroom, talking about
17 *toe-may-tow* versus *toe-mah-tow* and a few other things around
18 this contract that we had, the sad thing is, is that Tyson's
19 out trying to procure supply for the next year and the next
20 year. And Zia has managed to put together a model that --
21 it's a prototype for beef supply that brings the rancher
22 closer to the consumer and sticks Tyson in the middle of it.
23 And we feel like we were offering everybody in the chain a
24 win-win-win situation, so that the rancher would have a good
25 market for his cattle, so that the consumers have a

1 high-quality product they can count on, so that Tyson has a
2 good supply of dependable cattle that are very high quality.
3 Everybody in the chain makes a little margin, and it seems
4 like a win-win-win-win all the way across. But instead of
5 embracing the big picture, Tyson has decided to put
6 their feet in the ground -- their heels in the ground and
7 see if they can get around the outside of us for two and a
8 half million dollars instead of thinking about the big
9 picture.

10 Because, when we get done here, we're going to
11 see that Zia can handle a large capacity of high-quality
12 cattle. We are a relevant supplier, could be a relevant
13 supplier of beef in a beef supply chain.

14 Q. So you said prices have gone up for consumers for
15 beef. And what about the prices -- or the profits, rather,
16 for the packers?

17 A. Well, again, I'm a shareholder in Tyson Foods, so I
18 can tell you that my stock has increased. I don't have a
19 lot of stock, I have a little bit of stock, but my stock has
20 increased exponentially. Tyson, over the last five years,
21 has managed to enjoy revenues that range from 4 billion to
22 seven and a half --

23 MR. FISHER: Objection, Your Honor, relevance and
24 speculation on the part of the witness.

25 THE COURT: I'll overrule it as to relevance, but

1 I'll sustain it as to speculation without some more
2 foundation.

3 Q. (BY MS. DIAMOND): As a stockholder of Tyson
4 Foods, do you receive publicly available information
5 regarding their profit reports?

6 A. Yes, ma'am.

7 Q. And so what have you observed of those profit reports
8 in the last five years?

9 A. Tyson has made more money in the last few years --
10 through the pandemic and after the pandemic, they have made
11 more money than they have ever made on a percentage basis in
12 the history of the company. While consumers have gone into
13 the stores to buy animal-based protein products, and they
14 have doubled and tripled in price.

15 MR. FISHER: Objection, Your Honor. May we
16 approach?

17 THE COURT: Sure.

18 MS. DIAMOND: I have no further questions, Your
19 Honor.

20 THE COURT: That's fine. We're going to approach
21 about that.

22 (Bench conference.)

23 MR. FISHER: Your Honor, the witness is
24 testifying as to annual reports, public information, I
25 understand that, but he's not clarifying as to whether it's

1 to Tyson Fresh Meats or Tyson Foods, Inc. These are two
2 very different companies. Tyson Fresh Meats is only dealing
3 with meat, and Tyson Foods, Inc.'s main food is poultry.
4 They deal with prepared foods and all kinds of things, so --

5 MS. DIAMOND: We have a stipulation that you
6 can't make any representations that one entity doesn't make
7 as much as the other entity --

8 MR. FISHER: Well, that doesn't allow you to
9 attempt to bring in evidence about Tyson Foods, Inc., when
10 they're not a party. And I'm bringing this to the judge,
11 outside of the presence of the jury.

12 THE COURT: So we told the jury, pursuant to your
13 joint statement of the case, that "Tyson" meant "Tyson Fresh
14 Meats."

15 MS. DIAMOND: And he said "Tyson Foods."

16 THE COURT: Okay. So was he not talking about
17 Tyson Fresh Meats?

18 MS. DIAMOND: No. He said he's talking about
19 Tyson Foods.

20 He's talking about Tyson Foods.

21 THE COURT: So do we have an agreement
22 regarding --

23 MR. FISHER: We do not have an agreement. The
24 only agreement that we have is that I would not bring up, in
25 the presence of the jury, that you had any differentiation

1 between Foods and Fresh Meats. If you're talking to
2 Mr. Scherer, I wouldn't say, "Oh, you've got the wrong
3 person." We do not have an agreement, but -- evidence or
4 testimony, again, from someone who's not even an expert in
5 this about Tyson Foods, Inc., it's not relevant, at all,
6 because Tyson Foods, Inc., has been dismissed from the case.

7 THE COURT: Do you want to bring me the
8 agreement?

9 (Reporter interruption for clarification.)

10 (Discussion off the record.)

11 MS. DIAMOND: I mean, it doesn't matter. It's a
12 moot point. It's publicly available information as a
13 stockholder.

14 MR. FISHER: Well, the revenues of Tyson Foods,
15 Inc., is irrelevant here because they're not a party.

16 THE COURT: Let me show you the stipulation.

17 MS. DIAMOND: I'm not going to argue or suggest
18 that Tyson Foods is a small company --

19 THE COURT: Let me just look at it.

20 So it's Document 134.

21 (Discussion off the record.)

22 (Reporter interruption for clarification.)

23 I don't see that this -- I don't see that this
24 stipulation allows your witness to talk about the stock
25 price of Tyson Foods. I don't see -- I don't draw that from

1 this; however, your objection was made after the testimony
2 was already in, so I'll find that it's untimely. But don't
3 talk anymore about this.

4 MS. DIAMOND: I'm finished.

5 THE COURT: All right.

6 MR. FISHER: Thank you.

7 (Bench conference concluded.)

8 THE COURT: All right. Ms. Diamond, any more
9 questions?

10 MS. DIAMOND: No further questions. Thank you,
11 Your Honor.

12 THE COURT: All right.

13 Mr. Fisher, it's your witness -- or Mr. Gomez,
14 whoever is going to do it.

15 MR. FISHER: Thank you, Your Honor. If I could
16 have just one minute to get set up?

17 THE COURT: Of course.

18 MR. FISHER: Thank you.

19 (Discussion off the record.)

20 **CROSS-EXAMINATION**

21 Q. (BY MR. FISHER): Good morning, Mr. Perez.

22 A. Good morning, Mr. Fisher.

23 Q. I've got some follow-up questions I'd like to go over
24 with you, some questions based on your testimony after
25 questioning from Ms. Diamond and some other topics.

1 I'd like to start off with a couple of questions.
2 Zia Consulting, the company that you work for, is a
3 commodity consulting business, correct?

4 A. Mr. Fisher, there's two companies: One is called Zia
5 Commodities. It is a company that Sean owns that is a
6 commodity-based company; meaning, it deals with products
7 from the Chicago Mercantile Exchange. And Zia Ag
8 Consulting, another company that he owns, is a company
9 that's principally put in place to do consulting work and to
10 create beef supply for packers and retailers.

11 Q. Do you recall that, in August of last year, we got
12 together in Albuquerque and I took your deposition?

13 A. Yes.

14 Q. At that time, I asked you about how long Zia
15 Consulting had been registered as a company with the State,
16 and your testimony was that you weren't sure about that; is
17 that correct?

18 A. That is correct.

19 Q. You also testified -- I asked if there were any other
20 businesses associated with Zia Ag. And, at the time, you
21 told me that there were no others that you're aware of,
22 correct?

23 A. Yes.

24 Q. And at that time of your deposition, you told me you
25 weren't aware whether there were any principals in Zia

1 Consulting other than your son, Sean; do you recall? Is
2 that correct?

3 A. Yes, sir.

4 Q. And you testified, in that deposition last August, you
5 didn't know anything about the ownership of Zia Consulting
6 other than your son is a principal, correct?

7 A. Yes, sir.

8 Q. At that time of your deposition, you didn't know how
9 many people Zia Consulting employed, correct?

10 A. I didn't -- at the time of my deposition?

11 Q. Yes, Mr. Perez. Last August, when I took your
12 deposition, you testified and told me that you did not know
13 how many people Zia Consulting employed; isn't that correct?

14 A. That's probably correct, yeah.

15 Q. But you did know at the time Zia Consulting did not
16 employ any ranchers, correct?

17 A. Employ any ranchers?

18 Q. Yes.

19 A. We have a lot of ranch employees.

20 Q. Your testimony today is that Zia Consulting has
21 ranch -- you do employ ranchers?

22 A. So a ranch employee is different than a rancher. A
23 rancher is someone who owns a ranch. A ranch employee is
24 somebody that works on a ranch.

25 Q. Mr. Perez, my question is -- and my question at the

1 deposition -- I'd be happy to put it up for you, if it would
2 help refresh your memory -- (reading) "Are there any
3 ranchers that Zia employs?"

4 Your response was, "Ranchers? No."

5 Is that still accurate today?

6 A. Correct.

7 Q. And you also testified that Zia Consulting did not own
8 any cattle feedlots, correct?

9 A. Zia Ag Consulting, as far as I know, does not own any
10 feedlots.

11 Q. You've already testified today that, for Zia
12 Consulting, your role is director of cattle feed, correct?

13 A. Yes.

14 Q. You told me at your deposition that you've been
15 employed for five to ten years, somewhere in that
16 neighborhood; is that accurate?

17 A. Yes, sir.

18 Q. But you weren't able to remember exactly how
19 many years; is that right?

20 A. Yes, sir.

21 Q. And the role that you're in now at Zia Consulting is
22 the only role that you've had with them, correct?

23 A. Yes, sir.

24 Q. And in your role for Zia Consulting, you buy the
25 cattle that Zia Consulting acquires; isn't that right?

1 A. Yes, sir.

2 Q. Tyson is not involved in any way with the sale of the
3 cattle that are purchased by Zia Consulting, correct?

4 A. Tyson is not involved in the sale of cattle?

5 Q. Bob Scherer is not involved when Zia Consulting
6 purchases cattle, correct?

7 A. I don't understand the question.

8 Q. Zia Consulting is in the business of purchasing
9 cattle --

10 A. Yes.

11 Q. -- correct?

12 Bob Scherer is not present when Zia Consulting is
13 purchasing cattle; isn't that correct?

14 A. Not all the time. Sometimes they are. Sometimes he
15 is. He's been with me to ranches.

16 Q. Okay. Bob Scherer is not involved with your
17 negotiations in the purchase of cattle, correct?

18 A. With a rancher? No.

19 Q. You handle that, correct?

20 A. Yes, sir.

21 Q. You decide what is a fair price for the cattle that
22 Zia Consulting purchases, correct?

23 A. In my relationship with Tyson, I have shared with
24 various people what the cattle are going to cost. And I
25 have talked to --

1 Q. Mr. Perez, I don't mean to interrupt you, but that's
2 not what I'm asking.

3 My question is that you were the one who decides
4 what is a fair price for the cattle that Zia Consulting
5 purchases; isn't that correct?

6 A. That is correct.

7 Q. Okay. Tyson --

8 MR. WORDEN: Your Honor, I'm sorry, the last
9 question, Mr. Perez was in the middle of an answer. If
10 there is a motion to strike or something, the appropriate
11 time is after the answer. Thank you.

12 THE COURT: I'm sorry, what...

13 MR. WORDEN: The last question?

14 THE COURT: Yes.

15 MR. WORDEN: Mr. Fisher asked, "Is Tyson involved
16 with deciding how much to price the cattle?"

17 THE COURT: Yes.

18 MR. WORDEN: Mr. Perez answered half of it, and
19 then he was interrupted. I'm sure it was unintentional, but
20 we should let the witness finish.

21 MR. FISHER: Your Honor, Mr. Perez was not
22 answering my question. He was answering a different
23 question.

24 THE COURT: Okay. Go ahead.

25 MR. FISHER: Thank you, Your Honor.

1 Q. (BY MR. FISHER): Mr. Perez, I'm sorry, are you
2 ready?

3 A. Yes, sir.

4 Q. Tyson does not tell you what you should purchase
5 cattle for, for Zia, correct? The price that you should
6 purchase them for.

7 A. Mr. Fisher, Mr. Scherer has told me on more than one
8 occasion, "Get out there and buy cattle."

9 Q. Mr. Perez, my question is Tyson does not come to you
10 and say, "Mr. Perez, you need to purchase cattle for this
11 price," correct?

12 A. They may not -- the answer is "no," but they might
13 say --

14 Q. Thank you, Mr. Perez --

15 A. -- "we need 20,000 head or 10,000 head of cattle."

16 Q. -- Mr. Perez -- thank you. It was a simple "yes" or
17 "no" question.

18 Again, that's a decision that's made by you,
19 correct?

20 A. Yes, sir.

21 Q. In your job, you also negotiate with the feedyards
22 that the cattle go to, correct?

23 A. That is correct.

24 Q. And your negotiations with the feedyards are for what?

25 A. My negotiations with the feedyards are for what?

1 Q. Yes. What are you negotiating with the feedyards, in
2 your role with Zia Consulting?

3 A. We negotiate the price per ton for feed. We negotiate
4 the process that we're going to go through with whatever set
5 of cattle; if they need special needs or considerations.
6 And we negotiate a yardage that we will pay the feedyard for
7 housing the cattle.

8 Q. And those are -- those terms you're negotiating are
9 the costs associated with that feedyard, correct?

10 A. The cost associated with feeding the cattle that we
11 plan to put in there.

12 Q. You've been doing business with Tyson since around the
13 year 2000, correct?

14 A. Yes, sir.

15 Q. Over two decades now.

16 I'd like to talk to you a little bit now about
17 the cost plus spreadsheet. You were not the individual who
18 developed that; is that correct?

19 A. I had a hand in the implementation, but my son and his
20 team, his accounting team, are the folks that put this
21 together.

22 Q. Okay.

23 MR. FISHER: Your Honor, I'd like to seek to
24 admit Exhibit Number 114 at this time.

25 MR. WORDEN: No objection, Your Honor.

1 THE COURT: Sorry. Exhibit 114 is admitted,
2 without objection from Zia.

3 (Joint Exhibit 114 was admitted into evidence.)

4 Q. (BY MR. FISHER): Mr. Perez, do you recognize
5 this e-mail from January 5th of 2019?

6 A. Yes, I do.

7 Q. And this e-mail is from you, correct?

8 A. Yes, it is.

9 Q. And it's sent to your son, Sean; is that right?

10 A. Yes, it is.

11 Q. As well as a man named Jason Turnipseed, correct?

12 A. Yes, sir.

13 Q. Who is Jason Turnipseed?

14 A. He's our bank.

15 Q. He runs a company called Larue Road Capital, correct?

16 A. He owns Larue Road Capital, but I don't know if he
17 runs it.

18 Q. I asked you about Mr. Turnipseed, do you recall, in
19 your deposition last August?

20 A. I don't recall, no.

21 Q. You told me Larue Road Capital is a hedge fund; is
22 that right?

23 A. I think Larue Road Capital is a hedge fund. It's
24 structured like a hedge fund, but it's our bank. They
25 are -- in this case, they are our bank.

1 Q. And Zia Consulting works with Larue Road to raise
2 capital, to raise money, correct?

3 A. Zia Consulting works with Larue Capital to provide
4 projects for Larue Road Capital to put money into. Larue
5 Road Capital has the capital. They don't have to raise it.
6 They're looking for projects that have merit to put money
7 into.

8 Q. And in this e-mail on January 5th of 2019, you
9 represented to Mr. Turnipseed -- do you see what I've
10 underlined there? -- (reading), "These guys are willing to
11 do a cost plus deal for May and June."

12 Did I read that correctly?

13 A. You did read it correctly.

14 Q. And when was that willingness on the part of Tyson to
15 do a cost plus deal expressed to you?

16 A. When was it expressed to me by Tyson?

17 Q. Yes, sir.

18 A. In the fall of 2018.

19 Q. Okay.

20 A. When I was talking to Bob Scherer and I told him that
21 we would not continue forward on the journey that we had
22 been on, selling cattle the way we were selling them. And
23 this e-mail talks about Whole Foods. We went to visit with
24 Whole Foods directly --

25 Q. Mr. Perez, I appreciate that, but my question is not

1 about Whole Foods, so...

2 MR. FISHER: Your Honor, may I approach the
3 board?

4 THE COURT: Yes.

5 MR. FISHER: Thank you.

6 Q. (BY MR. FISHER): Mr. Perez, you testified
7 earlier that the blowup there, which is Exhibit
8 Number 18, which has already been admitted into
9 evidence, that is the cost plus spreadsheet or cost
10 plus model, correct?

11 A. Yes, sir.

12 Q. Exhibit Number 18 that's blown up there, I want to be
13 clear on this, when was the date that you provided that
14 spreadsheet to Bob Scherer?

15 A. First of all, this is a copy of the cost plus
16 proposal. And this proposal was provided to Bob Scherer on
17 the 14th of January, 2019.

18 Q. That proposal, right there?

19 A. Yes, sir.

20 MR. FISHER: And, Your Honor, I would like at
21 this time to admit Exhibit 119.

22 THE COURT: Zia's position?

23 MR. WORDEN: No objection.

24 THE COURT: Exhibit 119 is admitted, without
25 objection.

1 (Joint Exhibit 119 was admitted into evidence.)

2 MR. FISHER: Thank you, Your Honor.

3 Q. (BY MR. FISHER): Okay. Mr. Perez, do you
4 recognize this e-mail from January 17th of 2019?

5 A. Yes, sir.

6 Q. Okay. And was this e-mail sent the day after you met
7 Mr. Scherer at Happy Pastures in Texas?

8 A. Yes, sir.

9 Q. Okay.

10 A. It was sent -- I'm sorry, it was sent three days
11 after.

12 Q. After you met Mr. Scherer at Happy Pastures, correct?

13 A. We met on the 14th. So it was sent after, but
14 three days. Sorry.

15 Q. Okay. And this string of e-mails, it includes
16 correspondence between you and Mr. Turnipseed with Larue
17 Road, correct?

18 A. That is correct.

19 Q. And Zia Consulting was working with Mr. Turnipseed and
20 Larue Road to put together that cost plus spreadsheet; isn't
21 that correct?

22 A. No, sir.

23 Q. How is that incorrect?

24 A. Zia owned all these cattle and they put the
25 spreadsheet together because we had all the costs. And we

1 were contemplating letting Larue participate on these cattle
2 and other cattle we had available, so -- but, no, Larue Road
3 didn't put this spreadsheet together. Larue Road did not
4 put the cost plus proposal together. Zia and Zia's team
5 did.

6 Q. And you were looking to restart asset-gathering. Is
7 that something that you represented to Mr. Turnipseed?

8 A. That's what Mr. Turnipseed says here.

9 Q. And is that an accurate statement?

10 A. As far as I know, Mr. Turnipseed has the assets
11 gathered up, and it's just a matter of him selecting
12 different things to put those assets to work in.

13 Q. And then down here in this paragraph (indicating) --
14 I'm circling it -- there's some discussion about -- that
15 first sentence -- or, I'm sorry, the second sentence
16 (reading), "Let's get the specifics of the longer-term cost
17 plus hammered out."

18 Am I reading that correctly?

19 A. May I read it out loud?

20 Q. Of course.

21 A. (Reading) "To be very clear, only having the detail on
22 the 'shorter-term' Tyson cost plus and the current void of
23 specifics for Whole Foods does not help restart
24 asset-gathering. Let's get the specifics on the longer-term
25 Tyson cost plus hammered out. This would then drive the

1 shorter-term deal and allow me to 'sprinkle in' Whole Foods'
2 potential opportunity, along with getting real serious about
3 the bred heifer opportunity."

4 Q. Okay. And it's your testimony today that, as of the
5 date of this e-mail, you had already provided that document
6 (indicating) to Tyson, correct?

7 A. That is my testimony. Did you ask me to make a
8 comment on this paragraph somehow?

9 Q. I did not. I just asked you if I was reading it
10 correctly?

11 A. I just wanted to make sure I didn't miss a question.
12 Sorry.

13 Q. Thank you.

14 Okay. Had you contacted anybody at Tyson about
15 getting a deal in writing from them?

16 A. I talked to Mr. Scherer and I told him that we had to
17 have a more formal agreement. I also --

18 Q. Mr. Perez, if I may, my question is very simple: Had
19 you, at the time of this e-mail, contacted anybody at Tyson
20 and asked them for a deal in writing? "Yes" or "no"?

21 A. Yes.

22 Q. Okay. Thank you. And when was that?

23 A. Pardon me?

24 Q. When was that, that you contacted someone at Tyson
25 asking for a deal in writing?

1 A. I don't know, but I have the sneaking suspicion that
2 I'm going to be reminded about right now. I don't remember.

3 MR. FISHER: Your Honor, at this time, I'd ask to
4 admit Exhibit Number 1...

5 (Reporter interruption for clarification.)

6 MR. FISHER: 124.

7 THE COURT: What was the number, Mr. Fisher?

8 MR. FISHER: 124.

9 THE COURT: And from Zia?

10 MR. WORDEN: No objection.

11 MR. FISHER: I'm sorry.

12 THE COURT: All right. Exhibit 124 is admitted.

13 (Defendant's Exhibit 124 was admitted into evidence.)

14 Q. (BY MR. FISHER): And then do you recognize
15 this e-mail string -- I apologize, I'm marking on
16 this incorrectly.

17 COURT CLERK: I'll clear it.

18 A. Thank you. I was wondering what you were circling.

19 Q. (BY MR. FISHER): Yeah. I apologize, I can't
20 get the screen to come -- oh, there, it cleared.
21 Thank you.

22 And then do you remember this e-mail on which you
23 were copied? I'm happy to give you an opportunity to read
24 it. It's Exhibit Number 124. I'll scroll to what I was
25 wanting to ask you about, which is right (indicating)...

1 A. By and large, I remember this e-mail.

2 Q. And on this e-mail...

3 A. Do you mind scrolling up just a little bit so I can...

4 Q. Certainly.

5 A. That's great. Thanks.

6 Q. And on this e-mail, you -- there is discussion near
7 the bottom of the first page -- I apologize.

8 A. I'm sorry, when I asked you to scroll up, actually,
9 the circle moved.

10 Q. Are you able to see it now?

11 A. Yeah. I don't know what you want to circle, but the
12 circle is staying stationary and the script is moving
13 around, so...I apologize.

14 Q. What I wanted to ask you about was down here
15 (indicating). I apologize that it moves. I think I've got
16 it back in the place where I intended it to be.

17 Mr. Turnipseed, down at the bottom of the first
18 page, mentions he spoke with you about some updates to the
19 cost plus before submitting to Tyson; is that correct?

20 A. What I read that you circled is (reading), "Phil,
21 thank you for your help with this project. I just spoke to
22 Narciso. Not for us, but for Narciso submitting to Tyson,
23 please update your sheet for High Choice the cattle
24 deposit -- cattle deposit assumption to a flat \$200 a head
25 from \$30 [sic] equity. Jason."

1 Q. Mr. Perez, my question is about exactly what I've got
2 here (indicating). Am I reading correctly about you
3 submitting to Tyson? Is that in reference to the cost plus?

4 A. I'm not sure because this paragraph is about something
5 completely different.

6 Q. Okay. But it is your testimony that, as of
7 January 30th of 2019, the date of this e-mail, you had
8 already submitted the cost plus, correct?

9 A. Submitted it to who?

10 Q. To Bob Scherer.

11 A. Yes.

12 Q. Now, let's look, if we could, to Exhibit Number...

13 MR. FISHER: At this time, I'd ask to admit
14 Exhibit Number 19.

15 THE COURT: Give the number again.

16 MR. FISHER: 19.

17 THE COURT: From Tyson -- from Zia? What's Zia's
18 position on 19?

19 MR. WORDEN: No objection.

20 THE COURT: Exhibit 19 is admitted.

21 (Joint Exhibit 19 was admitted into evidence.)

22 Q. (BY MR. FISHER): Okay. Mr. Perez, you've
23 viewed this e-mail before. I'll represent to you
24 that it's in a slightly different version. Are you
25 able to read it there?

1 A. Do you mind just blowing it up one more, just a tiny
2 bit more.

3 Q. (Complying.)

4 Does that help? Let me move it down.

5 A. Yeah. Let's see, yes.

6 Q. This is the February 4th e-mail that you sent to Bob
7 Scherer, correct?

8 A. Yes, sir.

9 Q. The subject line on the e-mail is "show list"; is that
10 right?

11 A. Yes, sir.

12 Q. And in the e-mail, you told Mr. Scherer -- what did
13 you say to him down there?

14 A. You want me to read the part that's circled?

15 Q. If you could read that entire line, starting with
16 "look" to "snowboarding."

17 A. (Reading) "Look this over and let's talk. Sorry, I
18 have had a busy day. It is Tony's birthday and he went
19 snowboarding."

20 Q. So you represented here to Mr. Scherer you've had a
21 busy day, correct?

22 A. Yes, sir.

23 Q. And you represented that it's Tony's birthday,
24 correct?

25 A. That is correct, sir.

1 Q. And you represented he went snowboarding; is that
2 right?

3 A. Tony went snowboarding, yes, sir.

4 Q. And Exhibit Number 19 is the e-mail you sent, along
5 with what's already been admitted as Exhibit Number 18,
6 which is what's blown up on the board behind you, correct?

7 A. I'm sorry, so the previous document was Exhibit 19,
8 and this is Exhibit 18?

9 Q. That's correct.

10 A. Okay.

11 Q. Exhibit Number 19, which is this cost plus
12 spreadsheet, was attached to Exhibit Number 18 [sic],
13 correct?

14 A. So here's my confusion. I am confused.

15 Q. Okay. Let me see what I can do to help.

16 A. Thank you. I put a document on the console of the
17 pickup on January the 14th. And I e-mailed a document on
18 the 4th of February. And I don't know which one of those
19 is Exhibit 18. Is this Exhibit 18 that was put on
20 the...console of the pickup, or was this Exhibit 18 that was
21 part of this e-mail? Do you know?

22 Q. I don't know, Mr. Perez. I'm asking you. Which is
23 that? Was that (indicating) the document that you gave
24 Mr. Scherer?

25 A. This is the document that I gave Bob Scherer in the

1 pickup.

2 Q. Okay. I'll represent to you that your Counsel has
3 represented that that blowup (indicating) was attached to
4 this e-mail we're talking about on February 4th of 2019.
5 Is that incorrect?

6 A. I think it's correct.

7 Q. Okay. Where in this e-mail is there -- we've already
8 established you've set forth you had a busy day. You talked
9 about Tony's birthday and snowboarding. You represented in
10 your testimony earlier that this was the e-mail that you
11 sent the contract with, correct?

12 A. Cost plus contract, yes, sir.

13 Q. Where in this e-mail does it say anything alerting
14 Mr. Scherer that this was the contract that you have
15 testified to that you talked to him about in Happy, Texas?

16 A. There sits the contract (indicating).

17 Q. Mr. Perez, my question is where in this e-mail, where
18 in the body of this e-mail -- you talked about having a busy
19 day, you talked about snowboarding, and Tony's birthday.
20 Where do you mention a contract in this e-mail?

21 A. Obviously, we both know that there is no text in there
22 that mentions a contract; however --

23 Q. Did you mention anything about the substance of the
24 attachment to this e-mail there in the body?

25 A. No, sir.

1 Q. Did you mention anything about pricing for the cattle
2 in that attachment in the body of this e-mail?

3 A. In the body of the e-mail? No, sir.

4 Q. Did you mention anything about who was responsible for
5 paying the costs in that spreadsheet in this e-mail?

6 MR. WORDEN: Your Honor.

7 THE COURT: Yes.

8 MR. WORDEN: Exhibit 19 is a different version
9 that does not have the attachment. I would request that
10 Mr. Fisher use Exhibit 17 that's already been admitted and
11 authenticated as the version of the e-mail that did attach
12 the cost plus on February 4th. I don't think there is any
13 dispute about that.

14 MR. FISHER: Happy to do that, Your Honor.

15 THE COURT: Okay.

16 Q. (BY MR. FISHER): Mr. Perez, is the language
17 here in Exhibit 17 that your counsel has asked that
18 I use any different than what you saw in Exhibit 19?

19 A. No, sir.

20 Q. Okay. Is there any mention in what -- this body of
21 the e-mail about who is responsible for paying the costs in
22 the cost plus contract that you sent Mr. Scherer?

23 A. In the body of the e-mail, in text, no, sir.

24 Q. In this e-mail, you mention nothing about any change
25 in the way that Zia has done business with Tyson over the

1 past 20 years, do you?

2 A. No, sir.

3 Q. Thank you.

4 If I may pull up Exhibit 18, which I also have
5 blown up over there, which has been previously admitted.

6 A. Mr. Fisher, excuse me.

7 Q. Yes, sir.

8 A. There's a -- okay. It's gone, there was a yellow
9 circle in the middle of the document.

10 Q. Yes. Thank you for alerting me to that. It's a
11 little tricky, the technology system. I apologize for that.

12 Now, are you able to see Exhibit Number 18?

13 A. I see it. I'd prefer to step up to the board, if you
14 don't mind, just because it's larger.

15 Q. Absolutely. That would be great. Thank you.

16 THE COURT: Make sure to take the microphone with
17 you.

18 THE WITNESS: Yes, ma'am.

19 Q. (BY MR. FISHER): Mr. Perez, can you point to
20 where on that spreadsheet the word "contract" can be
21 found.

22 A. The word "contract" is not written on this document.

23 Q. But you testified that this document was the document
24 that you sent on February 4th that was the contract,
25 correct?

1 A. Yes, sir.

2 Q. But you didn't indicate that on there anywhere,
3 correct?

4 A. No, sir.

5 Q. And what you sent Mr. Scherer on February 4th was
6 updated from what you've testified to today that you gave
7 him in Happy, Texas, correct?

8 A. Yes, sir.

9 Q. So what was given to him on February 4th was the
10 contract --

11 A. Yes, sir.

12 Q. -- to be fair?

13 Was there a signature line somewhere on there
14 anywhere for Mr. Scherer to sign the contract?

15 A. No, sir.

16 Q. If we could look at the spreadsheet there in a little
17 more detail, we've established already through your
18 testimony that the first couple of columns are entitled
19 "cattle name" and "source," correct?

20 A. The first column that's in peach color is the ranch of
21 origin.

22 Q. All right. And that identifies the ranch the cattle
23 came from, correct?

24 A. Yes, sir.

25 Q. And then Ms. Diamond went through with you the next

1 column titled "location," and you explained that's where the
2 cattle were located; is that right?

3 A. Yes, sir. Think of it as chronology.

4 Q. And I'm blowing this up for the benefit of the jury
5 since the writing is a bit small. For example, about six
6 down, you've got some Cuervo Creek Ranch cattle, correct?

7 A. Seven down, Cuervo Creek Ranch.

8 Q. And what was the location of those cattle at that
9 time?

10 A. Happy Pasture.

11 Q. Okay. Are those some of the cattle that Mr. Scherer
12 drove down to Happy, Texas, to look over with you?

13 A. Yes, sir.

14 Q. Okay. And are those some of the cattle he was asking
15 you to get to a feedyard right away?

16 A. Yes, sir.

17 Q. If we could, let's look, going through this, at that
18 first row, under "ranch," it says "Stormy Burch." Do you
19 see that?

20 A. Yes, sir.

21 Q. And according to this spreadsheet, what's the location
22 of those Stormy Burch cattle?

23 A. Bullinger.

24 Q. And Bullinger is a feedyard, correct?

25 A. Bullinger is a feedyard, that's correct.

1 Q. And you had already placed these cattle with Tyson
2 prior to the creation of this spreadsheet, correct?

3 A. I had already placed them at Tyson?

4 Q. With Tyson. Is that incorrect?

5 A. On the 14th of January, Mr. Scherer knew about this
6 list of cattle, yes.

7 Q. Okay. Your next column after location, you've got the
8 sex of the cattle, correct?

9 A. The next column is Texas cattle? I'm sorry. What did
10 you say?

11 Q. You've got a column for ranch, correct?

12 A. Yes, sir.

13 Q. Column for location?

14 A. Yes, sir.

15 Q. Next to that, you've got a column for sex, correct?

16 A. Correct. The gender.

17 Q. And the Stormy Burch cattle are identified as steers,
18 correct?

19 A. Yes, sir.

20 Q. And then we get into the column after that. The
21 estimated remaining, I believe you've testified to, head
22 count, correct?

23 A. Yes, sir.

24 Q. And you explained already to the ladies and gentlemen
25 of the jury how you came up with this number, correct?

1 A. Yes, sir.

2 Q. Okay. And it's not an actual number, it's an
3 estimate, right?

4 A. It's the actual number minus 3 percent.

5 Q. Okay. So it's an estimate? The 3 percent is an
6 estimate, correct?

7 A. That's correct.

8 Q. 3 percent is an estimated death rate?

9 A. That's correct.

10 Q. You don't have anything on the spreadsheet showing the
11 original number of steer in that lot of cattle, do you?

12 A. No, sir.

13 Q. There's no way to determine that from this
14 spreadsheet, without knowing your formula, correct?

15 A. If you ask us for any protracted information, behind
16 each one of these cells are whatever is going on with those
17 cattle.

18 Q. The spreadsheet, without access to the cells behind
19 them, show 97 cattle estimated, after taking into account
20 that 3 percent death rate, correct?

21 A. That's correct.

22 Q. Okay. If you print off a copy of this, the person
23 reading it doesn't have access to that background
24 information, correct?

25 A. No, sir. But Mr. Scherer talks to people in our

1 office --

2 Q. Mr. Perez --

3 A. -- all the time.

4 Q. -- Mr. Perez, if you'd answer my question, I'd
5 appreciate it. Thank you.

6 And you handed -- you're alleging that, when you
7 were in Happy, Texas, you gave Mr. Scherer a paper copy of
8 this spreadsheet; is that right?

9 A. Yes, sir.

10 Q. Thank you.

11 Now, the next three columns after the estimated
12 remaining head count, that has to do with the estimated
13 weight of the cattle; is that correct?

14 A. Yes. In June 15, in the middle of June.

15 Q. That's a target weight, right?

16 A. Yes, sir.

17 Q. That's an estimated weight, what the average weight of
18 those cattle will be, as of June 17th; is that correct?

19 A. Yes, sir.

20 Q. And, again, this is an estimate, right?

21 A. Yes, sir.

22 Q. If you were to go out and weigh the cattle at that
23 time, on February 4th, they wouldn't -- that average
24 weight wouldn't have been 1,179, correct?

25 A. If they hit the estimate, they would be 1,179.

1 Q. And had you committed these cattle in any way in June
2 of 2019?

3 A. June of 2019?

4 Q. Yes.

5 A. June of 2019?

6 Q. Mr. Perez, on the third column, what's the date that
7 you have there at the top?

8 A. Estimated weight at lean months in June, these cattle
9 were projected to weigh a certain weight.

10 Q. Okay. And on that first row of the Stormy Burch Ranch
11 cattle, what is the number that you have there?

12 A. The head count, remaining head count?

13 Q. No, the estimated weight.

14 A. 1,179. 1,179 pounds.

15 Q. Thank you. And then let's move to the next three
16 columns in light blue. Do you follow me there?

17 A. Yes, sir.

18 Q. And what do these -- these columns are titled "total
19 cost," correct?

20 A. "Total cost."

21 Q. And these columns have been broken down by
22 April 15th, May 15th, and June 15th; is that correct?

23 A. Yes, sir.

24 Q. And for this lot of Stormy Burch Ranch cattle, you
25 have a number under the June 15th column; is that right?

1 A. Yes, sir.

2 Q. Is that when you had these cattle slotted to be ready?

3 A. We had these cattle projected to June the 15th. On
4 June the 15th, we're projecting that their weight will be
5 this and their cost will be that.

6 Q. And those weight projections and those cost
7 projections are estimates, correct?

8 A. Yes, sir.

9 Q. They are not definite numbers?

10 A. No, sir.

11 Q. They could be lower at the end and they could be
12 higher at the end, right?

13 A. That's correct.

14 Q. But the amount you have down for those Stormy Burch
15 Ranch cattle in the first row for June 15th, what is that
16 number?

17 A. I'm sorry, one more time?

18 Q. Certainly. If you'll go back to those blue columns
19 for total cost.

20 A. Light blue.

21 Q. The third column, total cost to June 15th, in the
22 first row for the Stormy Burch cattle -- are you following
23 me?

24 A. Yes, sir.

25 Q. What is the number that's listed there?

1 A. Are you talking about -- are you asking the total
2 dollars under 6-15?

3 Q. I'm asking for -- is the number listed "\$198,467.65."
4 Did I read that correctly?

5 A. That's correct.

6 Q. Other than that number, there's no breakdown on this
7 spreadsheet of what that number represents, is there?

8 A. Again, on this spreadsheet, no, but we know that
9 behind these cell --

10 Q. Thank you, Mr. Perez.

11 A. -- are all the costs.

12 Q. Thank you, Mr. Perez.

13 And there was no supporting documentation with
14 this spreadsheet in the February 4th e-mail to Bob Scherer
15 explaining where that number came from, was there?

16 A. That's an explanation we went over in the pickup in
17 Happy, Texas.

18 Q. And my question is, in the e-mail of February 4th --
19 you've alleged that that e-mail contained the contract that
20 you were sending to Bob Scherer, correct?

21 A. That's correct.

22 Q. And attached to that e-mail is the contract which we
23 are talking about now, correct?

24 A. Yes, sir.

25 Q. In the contract, is there any indication in there of

1 where that \$198,000 cost came from?

2 A. On the face, no. Behind it, yes.

3 Q. Thank you. And no supporting documentation was
4 provided in that e-mail along with this spreadsheet
5 explaining where that number came from, was there?

6 A. No, sir.

7 Q. And, again, looking at the face of the contract, is
8 there anything on the face of that contract that indicates
9 who is responsible for paying those costs?

10 A. I'm glad we both think this is a contract.

11 There are final dollars in this box (indicating).
12 And Mr. Scherer knew --

13 Q. Mr. Perez, that's not my question.

14 A. -- that these are the heads and these are the dollars.

15 Q. Mr. Perez, my question is -- you've alleged that this
16 is the contract. My question is: Is there anything on the
17 face of that contract that indicates who is responsible for
18 paying those costs?

19 A. No, sir.

20 Q. Okay. And the e-mail that you sent with that
21 spreadsheet -- and, I'm sorry. I'll use Exhibit 17 at the
22 request of your counsel. Again, this is the Tony's birthday
23 e-mail. Makes no indication, doesn't address costs, at all,
24 does it?

25 A. The body of the e-mail does not.

1 Q. And if we'll go to the -- if you'll go to the next
2 columns with me, the ones in the dark blue, those state
3 total costs per head; is that correct?

4 A. Yes, sir.

5 Q. And you've got the same date breakdown there of April,
6 May, and June, correct?

7 A. Yes, sir.

8 Q. And under the per-head cost for June 15th, for those
9 Stormy Burch Ranch cattle in the first row, the number
10 you've got listed is \$1,984.68; is that right?

11 A. Yes, sir.

12 Q. And, again, this is an estimated cost, it's not an
13 actual cost, right?

14 A. Yes, sir.

15 Q. Okay. And, again, no explanation is provided on the
16 face of this spreadsheet for how that \$1,984.68 figure is
17 reached, is there?

18 A. No, sir.

19 Q. And it's the same case with those last three columns.
20 Those last three columns are total cost per pound, correct?

21 A. Yes, sir.

22 Q. Okay. And for those Stormy Burch Ranch cattle, under
23 June 15th, we've got a total cost per pound of \$1.74,
24 correct?

25 A. Yes, sir.

1 Q. And that's not a guaranteed number?

2 A. This is an exact number because it divides these two
3 numbers -- it takes this number divided by the weight to
4 give you this number. So this particular number is an exact
5 extrapolation to those two numbers (indicating).

6 Q. Of the estimated weight number?

7 A. Correct.

8 Q. Which is an estimate. So you're taking a number from
9 an estimate, correct?

10 A. It is an estimate.

11 Q. Okay. Thank you.

12 And for those costs per pound, again, there is no
13 indication on there who is responsible for that, on the face
14 of this contract, correct?

15 A. No, sir.

16 Q. And the word "Tyson" appears nowhere on this
17 contract --

18 A. No, sir.

19 Q. -- that you're alleging --

20 Because, again, this is the document from
21 February 4th. It's the contract. This is the key of why
22 we're here, correct?

23 A. Yes, sir.

24 Q. Okay. And for this to be the contract, there's not
25 one place on there where the word "Tyson" is included?

1 A. No, sir.

2 Q. Thank you.

3 Mr. Perez, you're welcome to return to your seat.
4 I'm going to get back to some other exhibits.

5 MR. FISHER: At this time, I would ask to admit
6 Exhibit Number 129.

7 THE COURT: From Zia?

8 MR. WORDEN: No objection.

9 THE COURT: Exhibit 129 is admitted.
10 (Joint Exhibit 129 was admitted into evidence.)

11 MR. FISHER: Thank you, Your Honor.

12 Q. (BY MR. FISHER): Mr. Perez, if you will give
13 me one moment, I'm going to go to the third page of
14 Exhibit Number 129. It's going to be down in this
15 area (indicating).

16 Do you recognize or remember this e-mail dated
17 February 4th from Jason Turnipseed to you?

18 A. Yes, sir.

19 Q. And this February 4th was the same date that you
20 sent the e-mail to Mr. Scherer with what you're now calling
21 the "cost plus contract," correct?

22 A. Yes, sir.

23 Q. And in here, in this e-mail -- let me point you to
24 where exactly I'm looking. I am looking right here in the
25 beginning (indicating) -- the e-mail indicates that you and

1 Mr. Turnipseed had a conversation on the day before, on
2 February 3rd; is that right?

3 A. That's correct.

4 Q. Do you recall that conversation with Mr. Turnipseed?

5 A. Not really, but --

6 Q. Okay.

7 A. -- I don't have a problem imagining that we had one.

8 Q. Mr. Turnipseed represents in the e-mail, starting at
9 that first line (reading), "I now have the understanding
10 that Tyson will pay us \$125 over costs for the GAP and \$100
11 over costs for the NHTC and NE3 cattle."

12 Did I read that right?

13 A. You did a nice job reading it.

14 Q. Thank you.

15 In reality, you had never had a conversation with
16 Mr. Scherer about these exact \$125 or \$100, had you?

17 A. That is not correct.

18 Q. Okay. Are you alleging that you had that conversation
19 with Mr. Scherer back in Happy, Texas?

20 A. Yes, I am.

21 Q. And nobody else was present for that conversation,
22 correct?

23 A. No, sir.

24 Q. Just you and Mr. Scherer?

25 A. Yes, sir.

1 Q. And it's your testimony today -- I want to be very
2 clear on this -- that Mr. Scherer indicated to you that he
3 would accept \$125 over costs for the GAP cattle and \$100
4 over costs for the NHTC and NE3 cattle? Is that what you're
5 telling the ladies and gentlemen of the jury?

6 A. I'm telling you that I went through everything that we
7 had to have for these cattle to make it work for us with
8 Mr. Scherer.

9 Q. Mr. Perez, that wasn't my question. My question is --
10 and it's a "yes" or "no" question -- is it your testimony
11 today that Mr. Scherer agreed to pay \$125 over costs for the
12 GAP cattle and \$100 over costs for the NHTC and NE3 cattle
13 when you met with him in Happy, Texas, back on
14 January 14th, I believe it was?

15 A. When I met with him in Happy, Texas, on January the
16 14th, I had a document that looks like this document that
17 was very close to it, with all those costs baked in.

18 Q. Mr. Perez, I'm going to ask you for a third time,
19 "yes" or "no": Is it your representation to the ladies and
20 gentlemen of the jury today that Mr. Scherer agreed to \$125
21 over costs for the GAP cattle and \$100 over costs for the
22 NHTC and NE3 cattle? Those exact numbers.

23 A. It is my testimony that I created a cost plus model.
24 And down in that square --

25 Q. Mr. Perez --

1 MR. FISHER: Your Honor --

2 A. -- it has all of our costs.

3 MR. FISHER: I asked him a very direct question.
4 I'm asking him the exact numbers, if -- that's a "yes" or
5 "no" question.

6 THE COURT: Why don't you break it down into
7 smaller questions, because you're asking several things at
8 one time.

9 MR. FISHER: Of course.

10 Q. (BY MR. FISHER): Mr. Perez, is it your
11 testimony that Bob Scherer agreed to pay Zia \$125
12 over costs for GAP cattle when you met with him in
13 Happy, Texas?

14 A. Baked into this number, yes.

15 Q. Mr. Perez, no. My question is: Did you and
16 Mr. Scherer have a conversation where you told Mr. Scherer,
17 "I want \$125 over costs for GAP cattle," and Mr. Scherer
18 told you, "I will pay that"?

19 A. It is my testimony that, in this document, there are
20 six things --

21 Q. Mr. Perez, that's not my question. I think I've asked
22 six times now. It's very simple.

23 Did you tell Mr. Scherer you wanted \$125 over
24 costs for GAP cattle?

25 A. Yes, sir.

1 Q. You told him that in Happy, Texas?

2 A. Yes, sir.

3 Q. That exact number?

4 A. I told Mr. Scherer that our margin was baked in.

5 Q. Mr. Perez, this is a very simple question. I'm going
6 to ask one more time: Did you tell Mr. Scherer you wanted
7 \$125 per head for the GAP cattle, over costs?

8 A. Plus costs, yes, sir.

9 Q. You said \$125?

10 A. Yes, sir.

11 Q. And did you tell Mr. Scherer in Happy, Texas, that Zia
12 wanted \$100 over costs for the NHTC and NE3 cattle?

13 A. We would take less money, yes, \$100.

14 Q. \$100 is what you said?

15 A. Over cost.

16 Q. And Mr. Scherer agreed to that? Is that your
17 testimony today?

18 A. In Happy, Texas, Mr. Scherer agreed in principle to
19 what I showed him, but he told me --

20 Q. Mr. Perez, I'm not asking about "in principle." I'm
21 asking about specific numbers. We have an e-mail here, do
22 you understand, from Jason Turnipseed, your "banker," as you
23 have referred to him, to you in which he references a
24 conversation you had the day before -- again,
25 February 3rd -- which was the day before you sent over

1 what you're calling the "cost plus contract," correct?

2 A. Yes, sir.

3 MR. WORDEN: Your Honor -- Your Honor, Mr. Perez
4 was in the middle of answering the question before that.
5 Mr. Fisher didn't like the answer, so he interrupted and
6 started a new question. That's not permissible. We should
7 let the witness finish that question. And then Mr. Fisher
8 has options. He can move to strike, he can ask a new one,
9 but the time to do that is after the answer.

10 THE COURT: Mr. Fisher is trying to get Mr. Perez
11 to answer a very discrete question and is having trouble
12 doing that, so he's interrupting to try to get that done.

13 So, Mr. Fisher, I understand what's going on.
14 Please try to limit the interruptions.

15 Mr. Perez, please try to listen carefully and
16 answer the question.

17 MR. FISHER: And my interruptions are no sign of
18 disrespect in any way.

19 Q. (BY MR. FISHER): My question is just about the
20 GAP cattle. Is it your testimony today that you
21 told Mr. Scherer you wanted \$125 over costs for the
22 GAP cattle when you were in Happy, Texas, with him?

23 A. Yes, sir.

24 Q. And is it your testimony today that, when you were in
25 Happy, Texas, with Mr. Scherer, he told you, "I will accept

1 \$125 over costs for those GAP cattle"?

2 A. What Mr. Scherer told me is to send the final
3 document. I told him we were still putting numbers
4 together, and he said, "Let me look at it, and I'll let you
5 know if I can do it, 'yes' or 'no.'"

6 Q. So the answer is "no"; is that accurate? He did not
7 agree to that in Happy, Texas?

8 A. In Happy, Texas, he agreed in principle, and he wanted
9 to see the final document. And I told him that these were
10 not -- this was not the final document, when we were in
11 Happy, Texas.

12 Q. Where is the \$125 over cost reflected on the final
13 document?

14 A. You don't see it unless you get in the cells behind
15 the face numbers.

16 Q. Okay. Because nowhere on this claimed contract is the
17 number "\$125," is it?

18 A. You won't see it unless you drill down into those
19 numbers.

20 Q. If I go over there and look, am I going to see the
21 number "125"?

22 A. No. But you'll see it when you get --

23 Q. Thank you.

24 A. -- an invoice for the cattle, though.

25 Q. It's not on the face of the contract, is it?

1 A. It's not. We already discussed it.

2 Q. And the number "100," it's your testimony that you
3 told Mr. Scherer you wanted \$100 over costs for the NHTC and
4 NE3 cattle, correct?

5 A. That is correct.

6 Q. That \$100 is not anywhere on the face of your claimed
7 contract, is it?

8 A. It is not, no.

9 Q. Thank you. And at Happy, Texas, Mr. Scherer never
10 agreed specifically to pay \$125 over cost for the GAP, did
11 he?

12 A. Mr. Scherer understood what the document I had handed
13 him meant. And he also knew that he was coming --
14 Mr. Scherer agreed that he understood what the bottom box
15 had. It had all the costs in it.

16 Q. Where is the \$125 number in that box?

17 A. It's not on the face of the document.

18 Q. And where's the \$100 in that box?

19 A. It's not on the face of the document.

20 Q. Thank you, Mr. Perez.

21 Then if we can go -- let me clear this up a
22 little bit. I apologize, I keep marking on this
23 inadvertently.

24 THE COURT: Mr. Fisher, we're going to break for
25 lunch in about ten minutes, so keep that in mind for a good

1 breaking place for your cross.

2 MR. FISHER: Thank you, Your Honor.

3 Q. (BY MR. FISHER): And this section of the
4 e-mail -- and this is the e-mail from Mr. Turnipseed
5 to you dated February 4, 2019, correct?

6 A. Yes, sir.

7 Q. And in that e-mail, Mr. Turnipseed says to you
8 (reading), "Tyson will view the cattle once shipped to High
9 Choice. Upon viewing the cattle at High Choice, they will
10 write the cost plus contract."

11 Did I read that correctly?

12 A. That is correct.

13 Q. Do you have any idea where Mr. Turnipseed might have
14 gotten the idea that Tyson would be writing a cost plus
15 contract?

16 A. No, sir. He knew that we weren't going to get any
17 more than what we had.

18 Q. And then, at the end of the e-mail, he asks you
19 (reading), "Please let me know if I'm missing any other
20 important detail or if any of the above is not correct"; is
21 that right?

22 A. He did write that, yes.

23 Q. Okay. And you did not send Mr. Turnipseed any
24 response correcting him on any of that; is that right?

25 A. I don't know if I did or I didn't.

1 Q. Okay.

2 A. We might have talked about it on the phone.

3 Q. But there's nothing in that e-mail indicating that,
4 correct?

5 A. As a part of this chain, it doesn't look like it to
6 me.

7 MR. FISHER: Your Honor, would this be a good
8 point?

9 THE COURT: It's good for me, if it's good for
10 you. I just didn't want to interrupt.

11 Ladies and gentlemen, we're going to break, then,
12 for lunch. We'll be back here right about noon to get
13 started.

14 MR. WORDEN: One o'clock, you mean, Your Honor?

15 THE COURT: Yeah. I keep saying that. One
16 o'clock. Thank you.

17 (Jury not present.)

18 All right. Thank you. You can return to your
19 counsel's table, if you'd like.

20 Is there anything either party would like to
21 bring up before we break for lunch?

22 From Zia?

23 MR. WORDEN: No, Your Honor. Thank you.

24 THE COURT: From Tyson?

25 MR. FISHER: I don't believe so, Your Honor.

1 THE COURT: All right. Then we'll see everybody
2 back here at 1:00. Thank you.

3 (A recess was taken.)

4 Thank you. You may be seated. Before we bring
5 the jury out, I wanted to discuss briefly Tyson's objection
6 to Mr. Perez' testimony regarding the net worth of the
7 company.

8 So, looking back at the testimony, Mr. Perez
9 testified that he's a shareholder in Tyson Foods and then
10 discusses the income or the net worth of Tyson. Now, the
11 parties have stipulated that "Tyson" can be used without
12 differentiating between "Tyson Fresh Meats" and "Tyson
13 Foods." So I think that I was unclear exactly what
14 Mr. Perez was testifying about, but, looking back on it, I
15 think he was testifying about "Tyson Foods," even though I
16 thought he was testifying about "Tyson," pursuant to the
17 stipulation.

18 So I want to tell the parties that, either way, I
19 would not allow any argument in closing that any punitive
20 damages should be based on the net worth of Tyson Foods or
21 any -- or net income or share prices or anything. But if
22 Tyson wants some kind of other instruction or wants me to go
23 back and strike some of the testimony, I would consider
24 doing that. And I'll just let Tyson decide what it wants to
25 do by the close of the case. And, of course, consult with

1 Zia regarding any remedy that you want. And I apologize. I
2 was confused about to whom or to which entity Mr. Perez was
3 referring to when he said "Tyson," not realizing earlier he
4 had said "Tyson Foods" earlier.

5 MR. FISHER: Okay. That's completely fair, Your
6 Honor.

7 THE COURT: And I apologize.

8 Ms. Diamond, do you have any questions about
9 that?

10 MS. DIAMOND: No, that's fine. We won't use
11 that --

12 THE COURT: I'll let you discuss it. And I know
13 you have the stipulation, which maybe confuses things more,
14 so I don't know if you want a remedy, at all. But, if you
15 do, think about it and let me know. Either way, I'm not
16 going to allow any information about Tyson Foods' financial
17 resources or finances to be used as damage -- or as argument
18 in punitive damage requests.

19 Any questions from Tyson?

20 MR. FISHER: I don't believe so, Your Honor.

21 THE COURT: Everybody ready for the jury?

22 MS. DIAMOND: Yes, Your Honor.

23 THE COURT: Okay.

24 (A recess was taken.)

25 Mr. Fisher, you let me know if you want anything,

1 any instructions or any striking of that testimony, by the
2 end of your case in chief; is that fair?

3 MR. FISHER: Fair enough, Your Honor.

4 THE COURT: Okay.

5 (Discussion off the record.)

6 (Jury present.)

7 Thank you. You may be seated.

8 Mr. Fisher, you may continue your
9 cross-examination.

10 MR. FISHER: Thank you, Your Honor.

11 Q. (BY MR. FISHER): Mr. Perez, before we broke
12 for lunch, I was asking you some questions about
13 some e-mails related to the cost plus spreadsheet.
14 Do you recall that?

15 A. Yes, sir. Yes, Mr. Fisher.

16 Q. Thank you, sir.

17 MR. FISHER: If I could, at this point, I'd like
18 to admit Exhibit Number 125.

19 THE COURT: Zia's position?

20 MR. WORDEN: No objection, Your Honor.

21 THE COURT: Exhibit 125 is admitted.

22 (Joint Exhibit 125 was admitted into evidence.)

23 Q. (BY MR. FISHER): Mr. Perez, do you remember
24 this e-mail -- I'll be happy to go to the second
25 page of it -- from Phil Chavez to you on

1 February 1st of 2019, with a cost plus model
2 attachment? And I'd be happy to scroll to the
3 attachment, if that's helpful to you.

4 A. Please, Mr. Fisher.

5 Q. Certainly. And please let me know if I can blow this
6 up for you.

7 A. That would be much appreciated.

8 Q. Just let me know if I need to move to a side or
9 anything.

10 Okay. Do you recall receiving this e-mail from
11 Phil Chavez on February 1st of 2019?

12 A. I don't.

13 Q. Do you know what -- do you see the title of the
14 attachment is "cost plus model 2-1-19"? Am I reading that
15 correct? And --

16 A. Yes, sir --

17 Q. -- does --

18 A. -- I see that.

19 Q. -- that attachment appear to be an Excel spreadsheet
20 to you?

21 A. Yes, sir.

22 Q. But you don't recall receiving this from Mr. Chavez?

23 A. No, Mr. Fisher, I don't.

24 Q. Thank you. This e-mail was sent to you three days
25 before your e-mail to Bob Scherer with what you are now

1 contending was the contract; is that correct?

2 A. I agree with that.

3 Q. But will you also agree with me that the spreadsheet
4 in this e-mail is different than the spreadsheet that we've
5 got blown up there behind you?

6 A. I do agree with that.

7 Q. Specifically looking here at the total cost -- and let
8 me back up, if I may.

9 On this spreadsheet in Exhibit Number 125, the
10 first ranch on it is the Stormy Burch Ranch cattle located
11 in Bullinger; is that right?

12 A. That is correct, sir.

13 Q. Is that -- and I believe there's 97 head estimated
14 remaining after the death loss on this attachment to
15 Exhibit 125, correct?

16 A. 97 head? Yes, sir, Mr. Fisher.

17 Q. And does that appear -- and if you need to stand up,
18 please feel free. Does that appear to match the cattle from
19 Stormy Burch Ranch at the top of the claimed cost plus
20 contract?

21 A. The specific question is the head count?

22 Q. My specific question is: Are the cattle -- are there
23 97 head of estimated cattle from Stormy Burch Ranch located
24 with Bullinger Feedyard on the top of that --

25 A. Yes, Mr. Fisher.

1 Q. -- on the spreadsheet?

2 Okay. And if you'll -- excuse me. I'm sorry.

3 If -- back on Exhibit Number 125. I apologize for having
4 you get up and down -- the first row of total costs on this
5 February 1st spreadsheet, there appears to be three
6 different total costs in those columns; do you see that?

7 A. Yes.

8 Q. Costs for April, May, and June of 2015 [sic]?

9 A. Yes, sir.

10 Q. Or, I'm sorry, April 15th, May 15th, and June 15th?

11 A. Yes, Mr. Fisher.

12 Q. As opposed to Exhibit 18 there, which is the claimed
13 cost plus contract, where there's only a number in the
14 June 15th column; is that right?

15 A. That is correct.

16 Q. So this spreadsheet differs from that spreadsheet,
17 correct?

18 A. They're not the same spreadsheets.

19 MR. FISHER: Now, if I may, Your Honor, I'd like
20 to admit Exhibit 130.

21 THE COURT: From Zia?

22 MR. WORDEN: No objection.

23 THE COURT: Exhibit 130 is admitted.
24 (Joint Exhibit 130 was admitted into evidence.)

25 Q. (BY MR. FISHER): Okay. Mr. Perez, I want to

1 ask you a couple of questions about Exhibit 130,
2 which is an e-mail -- let's see if I've got this
3 down finally. Bear with me one moment.

4 The date on this e-mail is February 13th of
5 2019; is that correct?

6 A. Yes, sir.

7 Q. And this e-mail is from you to Jason Turnipseed at
8 Larue Road; is that correct?

9 A. Yes, Mr. Fisher.

10 Q. Well, I thought I had this down. Apparently not. My
11 apologies.

12 And in this e-mail, going down -- bear with me
13 one moment -- do you see where Mr. Turnipseed is asking you
14 (reading), "CLA is asking about a valuation of the cost plus
15 cattle. Is the e-mail I wrote and sent on September 4th
16 [sic] highlighted in bold correct?"

17 Do you see that?

18 A. Yes, Mr. Fisher.

19 Q. And does it appear that Mr. Turnipseed is seeking
20 clarification from you on this issue?

21 A. It appears to me that CLA is asking him for things,
22 and he's asking, in turn, us for things.

23 Q. And what is CLA?

24 A. I'm not sure.

25 Q. But he refers to "the e-mail below from February 4th

1 highlighted in bold" and is asking you if the bolded
2 language is correct, isn't he?

3 A. He's inquiring -- yes, Mr. Fisher, he's inquiring
4 regarding the previous e-mail.

5 Q. And in that previous e-mail, the bolded language is
6 (reading), "Upon viewing the cattle at High Choice, they
7 will write the cost plus contract."

8 Did I read that correctly?

9 A. That's what he is asking, correct?

10 Q. Okay [sic]. And was it your understanding that "they"
11 referred to Tyson?

12 A. It's an assumption of mine, but I would assume yes.

13 Q. And you responded in your 10:06 e-mail here with -- I
14 apologize. I've got -- a question about valuation; is that
15 right?

16 A. I responded (reading), "The valuation, meaning how do
17 they value them? Tyson will go to the yard, look at the
18 cattle, look at the cattle's documentation, and look at the
19 cattle's health. Their value will be based on the amount
20 that we give the feedlot for the purchase amount on the
21 cattle."

22 Q. Thank you, Mr. Perez.

23 But down here in this e-mail, he's asking for
24 confirmation if the language highlighted in bold is correct.
25 And that language highlighted in bold is (reading), "Upon

1 viewing the cattle at High Choice, they will write the cost
2 plus contract." Did you confirm in your e-mail response to
3 him that his understanding was correct?

4 A. I did not confirm that.

5 Q. You didn't address it, one way or the other, did you?

6 A. I did not confirm that, because that's not what I
7 thought.

8 Q. And you didn't tell Mr. Turnipseed in your e-mail to
9 him that that representation was incorrect, did you?

10 A. Not in this e-mail, no.

11 MR. FISHER: Next, if I may, I would like to
12 admit Exhibit 132, please.

13 THE COURT: And from Zia?

14 MR. WORDEN: No objection, Your Honor.

15 THE COURT: 132 is admitted.

16 (Joint Exhibit 132 was admitted into evidence.)

17 Q. (BY MR. FISHER): Now, Mr. Perez, I'm showing
18 you what's been marked as Trial Exhibit Number 132.
19 I would like to ask you a couple of questions about
20 it.

21 On the second page here, do you recognize this as
22 an e-mail from Jason Turnipseed on which you were copied on
23 February 14th, 10 days after you sent the cost plus
24 spreadsheet to Mr. Scherer?

25 A. It is an e-mail from Jason to Mike Rogers.

1 Q. And you're copied on that e-mail, correct?

2 A. Yes, sir.

3 Q. And going down to page 2 in this e-mail, here at point
4 three, there is (reading), "Number 3, once the Happy cattle
5 are financed, at a feedlot, and Narciso gets Tyson to either
6 put on paper our cost plus deal" -- this reference to
7 putting it on the cost plus deal -- "or gets Tyson to
8 communicate some other way, that can be submitted to our
9 admin."

10 Had you represented to Mr. Turnipseed that you
11 were going to Tyson to put the cost plus deal on paper?

12 A. Mr. Fisher, I represented to Tyson [sic] that they
13 don't like to document things very much and that we had what
14 we had and that's all we had. We had a contract with a cost
15 plus document, and I didn't expect to receive any other
16 documents from them.

17 Q. And at this point, you had forwarded Mr. Scherer's
18 response to your February 4th e-mail about getting the
19 cattle into the yard to Mr. Turnipseed, correct?

20 A. I don't know if I did or not.

21 Q. Well, that is your understanding based on your earlier
22 testimony of Mr. Scherer's acceptance of the contract that
23 you're claiming, correct?

24 A. Mr. Scherer's acceptance of the contract --

25 Q. Yes --

1 A. -- yes.

2 Q. -- let me go back --

3 A. What did I send to Jason Turnipseed? I don't recall.

4 Q. And I'll use your counsel's preferred version of this.

5 Did you not testify with Ms. Diamond that, when
6 you received this e-mail, "Looks good, get them in the
7 finish yard ASAP, please," that you considered that the
8 acceptance of the cost plus spreadsheet?

9 A. Yes, sir. Yes, Mr. Fisher.

10 Q. And you sent that to Jason Turnipseed, correct?

11 A. I don't know if I did or not.

12 Q. Because they're seeking confirmation of some sort of
13 acceptance of this contract from Tyson, aren't they?

14 A. They're asking if we will get anything further in
15 writing from them. And I'm telling him that we will not.

16 Q. And you can't remember whether or not you sent that
17 e-mail to Mr. Jason Turnipseed; is that correct?

18 A. I don't know if we sent that to Jason Turnipseed or
19 not.

20 Q. Okay. Going back to Exhibit 132 -- again, I apologize
21 for jumping back and forth here -- going back up in the
22 e-mail, do you see that Mr. Turnipseed confirmed that
23 (reading) "...the 300,000 wire has now been sent to
24 Prewitt"?

25 Do you see that?

1 A. Yes.

2 Q. And Prewitt is a feedyard in which you had cattle,
3 correct?

4 A. Yes, sir.

5 Q. And your response on learning of the \$300,000 wire
6 sent to Prewitt was (reading), "Check"; is that right?

7 A. Yes, sir.

8 MR. FISHER: Now, if I may, I would like to --
9 I'm sorry, this has already been admitted.

10 Q. (BY MR. FISHER): Exhibit Number 133. And do
11 you recall Ms. Diamond asking you about this e-mail
12 from you to Bob Scherer on February 18th of 2019?

13 A. Yes, Mr. Fisher.

14 Q. And the subject on this e-mail -- well, first of all,
15 this appears to be an e-mail string, it looks like, on --
16 earlier that day, about 30 minutes prior, Phil Chavez with
17 Zia sent you an e-mail with a corrected cost plus
18 attachment.

19 Do you recall that? I'm looking down here
20 (indicating).

21 A. I don't recall that.

22 Q. Do you recall the February 18th corrected cost plus
23 that I believe you went over with Ms. Diamond?

24 A. What exhibit is this spreadsheet supposed to be?

25 Q. It is Exhibit Number 132.

1 A. May I ask if this exhibit is used somewhere else, like
2 Number 17 or 18? I realize the e-mail's Exhibit 133. I'm
3 just asking if this exhibit that's attached has its own
4 number --

5 Q. I'll represent to you I don't believe it's
6 anywhere else in the exhibits. Your counsel's free to
7 correct me, but this is an attachment to Exhibit 133. And I
8 believe you went over this with Ms. Diamond. This was
9 February 18th of 2019. Am I reading that right?

10 A. That's what I see.

11 Q. Okay. And it's an e-mail from you to Bob Scherer at
12 Tyson, correct?

13 A. That is correct, sir.

14 Q. This is two weeks after that February 4th
15 spreadsheet that you contend constitutes the contract,
16 correct?

17 A. Yes, Mr. Fisher.

18 Q. And was this an update -- was this an update, as it's
19 indicated, of the February 4th e-mail -- February 4th
20 spreadsheet?

21 A. I believe it is.

22 Q. Okay. In between February 4th and February 18th
23 with this spreadsheet that you sent over -- and before I ask
24 the question, it looks like, on this spreadsheet, you've
25 highlighted three ranches here, correct?

1 And let me blow that up for you a little bit.

2 A. (Indicating.)

3 Q. And those three lots of cattle are not highlighted on
4 the spreadsheet we've got blown up here (indicating),
5 correct?

6 A. I don't believe so. You have Cuervo Creek, but we
7 have a couple of different sets of Cuervo Creek.

8 Q. So this is an update that was sent by you to
9 Mr. Scherer; is that an accurate representation?

10 A. I'm not a hundred percent sure about these Cuervo
11 Creek. There's two sets here, but the Mogus cattle are not
12 in here.

13 Q. And I apologize if my question wasn't clear. I just
14 wanted to clarify that what I've just shown you attached to
15 Exhibit Number 132 -- or, I'm sorry, 133, that spreadsheet
16 is an update of that spreadsheet (indicating); is that
17 accurate?

18 A. Without putting a pencil to it, I really don't know.

19 Q. Okay.

20 A. But what I can testify to is that there's at least one
21 set of cattle on this spreadsheet that's not on that
22 spreadsheet, and that that would be the Mogus cattle.

23 Q. Were there any other changes -- and, again, I'm happy
24 to scroll in on this for you --

25 A. I do not know.

1 Q. On this spreadsheet sent two weeks after the
2 February 4th spreadsheet, had you added the word "Tyson"
3 anywhere to the spreadsheet?

4 And, again, I'm happy to blow up any part of it
5 for you.

6 A. No, Mr. Fisher.

7 Q. Had you added any clarification as to who was
8 responsible for the costs listed on this spreadsheet
9 two weeks later?

10 A. No, Mr. Fisher.

11 Q. Any additional calculations showing how these cost
12 numbers were reached on this spreadsheet sent two weeks
13 later?

14 A. May I ask that we expand that little box at the
15 bottom --

16 Q. Certainly.

17 A. -- please?

18 Thank you.

19 Q. Of course.

20 A. The biggest difference I see in those two
21 spreadsheets, these two cost plus models, is that there's a
22 few more cattle on this one. That one has 8,666. This one
23 has 8,892.

24 Q. And I appreciate that clarification, but that wasn't
25 my question, Mr. Perez. My question was -- and let me

1 actually ask a different question.

2 Before we broke for lunch, we were talking about
3 the \$125 per head over costs for GAP cattle. Do you recall
4 that conversation we had?

5 A. Yes, Mr. Fisher.

6 Q. Is that \$125 for costs, has that been added to this
7 spreadsheet anywhere?

8 A. It is baked into this number, yes, sir.

9 Q. But we're not going to find the \$125 per head cost,
10 itself, anywhere on the face of this spreadsheet?

11 A. No. No, Mr. Fisher.

12 Q. And we're not going to find the \$100 per head over
13 costs for NE3 and NHTC cattle on the face of the
14 spreadsheet, are we?

15 A. NHTC, no, sir.

16 Q. Thank you.

17 Now, I'm going to -- if we could turn our
18 attention to this exhibit, which has already been admitted.
19 This is Exhibit 135. And now we're moving into March of
20 2019 here. Do you recall sending this e-mail, subject line
21 "updated list," to Mr. Scherer on March 4th of 2019?

22 A. Yes, Mr. Fisher, I do remember sending it.

23 Q. And what -- you've got an attachment to this e-mail.
24 What is this attachment?

25 A. It is a cost plus model update.

1 Q. All right. And up on the top here, you have put in
2 the subject line "updated list," correct?

3 A. (Reading) "Subject, updated list for 2019-3-4 cost
4 plus update."

5 Q. Well, in this update, was anything added indicating
6 who is responsible for the costs?

7 A. I would ask, if you don't mind, just expand it a
8 little more, please.

9 Q. Certainly. Any part, in particular?

10 A. Well, if you want to expand the highlighted --
11 high-lit boxes, that helps.

12 Q. Does that help (indicating)?

13 A. You bet. And, if you don't mind, if you go down and
14 let me see the high-lit boxes at the bottom, please.

15 Q. Certainly. Does that help (indicating)?

16 A. Yes, sir.

17 Q. Okay. Has any addition been made to this spreadsheet
18 indicating who is responsible for the costs in these
19 columns?

20 A. No, Mr. Fisher.

21 Q. Okay. And, again, we're not going to find any
22 reference to the \$125 per head over costs for GAP cattle or
23 the \$100 per head over costs for the NHTC or the NE3 cattle
24 on the spreadsheet, are we?

25 A. No, Mr. Fisher.

1 Q. And also, you had mentioned that...

2 MR. FISHER: Now, I would like to admit Exhibit
3 Number 140, Your Honor.

4 THE COURT: From Zia?

5 MR. WORDEN: No objection, Your Honor.

6 THE COURT: Exhibit 140 is admitted.

7 (Joint Exhibit 140 was admitted into evidence.)

8 MR. FISHER: Thank you.

9 Q. (BY MR. FISHER): I've got several questions to
10 ask you on this one, Mr. Perez. And I'm going to
11 move down and work our way back up chronologically
12 here, hopefully, for a little bit of ease.

13 Okay. Do you recall this e-mail from Jason
14 Turnipseed of Larue Road to you dated March 13th of 2019?

15 A. I believe I've seen this e-mail before, Mr. Fisher.

16 Q. And the e-mail indicates that you and Mr. Turnipseed
17 had a conversation that day. Do you recall that
18 conversation you had with Mr. Turnipseed?

19 A. I don't.

20 Q. Okay. And just below that, in Number 1,
21 Mr. Turnipseed writes (reading), "If Tyson is not going to
22 put on paper the cost plus deal, please send Mike and I an
23 e-mail that outlines the cost plus deal that you have
24 verbalized with them."

25 Did I read that correctly?

1 A. Of course you did --

2 Q. Okay.

3 A. -- Mr. Fisher.

4 Q. Thank you, Mr. Perez.

5 Based on that, had you -- at this point,
6 March 13, 2019, more than a month after you had sent the
7 February 4th e-mail to Mr. Scherer, had you informed
8 Mr. Turnipseed by this time that the cost plus deal wasn't
9 going to be on paper?

10 A. I informed Mr. Turnipseed -- again, he's our bank. I
11 informed Mr. Turnipseed that Tyson does not like to fill out
12 contracts at different feedlots, that we had the
13 confirmation on the cost plus contract at February 4th,
14 and that's what we had.

15 Q. But Mr. Turnipseed didn't consider that a cost plus
16 deal on paper, did he?

17 A. I think Mr. Turnipseed says (reading), "This is
18 strictly for CLA, the fund's accountants" --

19 Q. Mr. Perez, I'm --

20 A. -- "and not all the cattle go onto our books at a
21 loss."

22 Q. Mr. Turnipseed, did you not -- how did you interpret
23 this? Did you interpret it as an understanding of
24 Mr. Turnipseed that he wasn't going to be getting a cost
25 plus deal on paper?

1 A. No. What I interpret this as is that this fund
2 allocates their accounting different ways. And CLA, it
3 looks like that's the fund's accountants. And it seems to
4 me like what Mr. Turnipseed is trying to accomplish here is
5 he's trying to get a higher book value for the cattle than
6 what CLA is allowing him to get to close his quarterly
7 statements out, or monthly statements or something.

8 Q. Thank you, Mr. Perez.

9 And then immediately above that, do you see --
10 again, is an e-mail response from Mike Dancey, who is also
11 with Larue Road, correct?

12 A. At that time, he was with Larue. I don't know if he
13 is now.

14 Q. At the time, Mr. Dancey states (reading), "If Tyson
15 won't write up the overall deal, will they write cost plus
16 contracts for the cattle that are in the feedlots that are
17 scheduled to be delivered in two to three months?"

18 Did I read that correctly?

19 A. That's what he says, yes.

20 Q. And reading these e-mails, is it your understanding
21 that Mr. Dancey is under the impression also that Tyson will
22 not be writing up the cost plus deal?

23 MR. WORDEN: Objection, Your Honor, relevance.

24 THE COURT: Do you have a response to what the
25 relevance is?

1 MR. FISHER: I do, Your Honor. This is all --
2 and I'm almost through with this -- a disconnect in
3 communications, is what I'm trying to establish here,
4 between the bank and Mr. Perez on --

5 THE COURT: Why don't you approach so we can
6 talk.

7 MR. FISHER: Certainly.

8 (Bench conference.)

9 THE COURT: If you have longer explanation, just
10 in general, just ask to approach.

11 MR. FISHER: I apologize.

12 THE COURT: You're fine. Go ahead and explain --

13 MR. FISHER: What I'm trying to establish here is
14 we've got a communication -- we've got Mr. Perez' testimony,
15 but the e-mails tell a different story of his "bank," we'll
16 call it, again and again, asking for written confirmation of
17 things, and either not answering or e-mails suggesting that
18 they're coming. I've got maybe two more to go over, but
19 it's a --

20 THE COURT: I understand --

21 MR. FISHER: -- pattern of showing --

22 THE COURT: -- I understand --

23 MR. WORDEN: Here's the problem, Your Honor.

24 THE COURT: Go ahead.

25 MR. WORDEN: Mike Dancey is an employee of,

1 basically, the mortgage lender. His understanding is
2 completely irrelevant to anything else here. And, by the
3 way, he's answered it. He said, "I told them they're not
4 going to get any more." It's been asked and answered and
5 it's irrelevant, what Mike Dancey thought of anything.

6 THE COURT: I'm going to agree it's irrelevant,
7 what other people thought about things, so it's sustained.

8 MR. FISHER: Okay. Thank you.

9 MR. WORDEN: Thank you.

10 (Bench conference concluded.)

11 Q. (BY MR. FISHER): Okay. Mr. Perez, moving up,
12 Mr. Dancey requested an e-mail outlining the deal
13 from you, is that correct, where I've underlined
14 there?

15 A. Yes, sir.

16 Q. And then you responded to that e-mail, correct?

17 A. Yes, I did.

18 Q. Okay. And you asked Mr. Dancey to write up an outline
19 to help you with that; is that right?

20 A. I said in the e-mail (reading), "Again, please write
21 up an outline that will help and we will work on it."

22 Q. You asked Mr. Dancey to write up an outline to assist
23 you in complying with his request?

24 A. That is correct.

25 Q. Thank you. And then, on March 21st, a week later,

1 we have an e-mail, again, you're copied on, from Sean Perez
2 to Mike Dancey offering to take a first stab at that
3 outline; is that right?

4 A. That is correct.

5 Q. So, at this point, instead of you working on the
6 outline, Sean Perez is going to work on the outline; is my
7 understanding correct?

8 A. I asked Mr. Dancey if he would write an outline and
9 send it to us.

10 Q. Correct. And then Mr. Dancey responded on
11 March 21st. And then Sean Perez responded (indicating),
12 "I don't mind taking a first stab at it. Let me get with
13 Narciso and get the bullet points."

14 Did I read that correctly?

15 A. Yes, Mr. Fisher.

16 Q. Thank you. And then on the top of that e-mail, is
17 this a letter on Zia Agricultural Consulting letterhead?

18 A. I'm sorry, did you ask if it was?

19 Q. Yes, is this Zia Agricultural Consulting --

20 A. Yes --

21 Q. -- letterhead?

22 A. -- yes, Mr. Fisher, it is on Zia Ag Consulting
23 letterhead.

24 Q. And the date on that is March 21st, 2019?

25 A. Correct.

1 Q. And the name down here is Sean Perez, Manager; is that
2 correct?

3 A. That is correct.

4 Q. Do you recall, was this something that Sean drafted in
5 response to this e-mail chain?

6 A. I'm pretty certain he did draft it, but I don't
7 remember him drafting it.

8 Q. Fair enough. Thank you.

9 Oh, I apologize. I shut that down too fast. I
10 had one more question for you.

11 And in his letter, Sean states (reading), "Tyson
12 has agreed to purchase all of the calves under a cost plus
13 model."

14 Am I reading that correct?

15 A. That is correct.

16 Q. And what is that agreement -- or when did that
17 agreement occur?

18 A. The only agreement that Zia had with Tyson is the
19 agreement that took place on the 4th of February with the
20 cost plus contract.

21 Q. And I believe you've testified that certain components
22 of that agreement were discussed with Mr. Scherer in Happy,
23 Texas, back in January; is that correct?

24 A. Yes, sir.

25 Q. But Sean was not there for those conversations, was

1 he?

2 A. He was not in the vehicle, no, sir.

3 Q. Thank you.

4 MR. FISHER: At this time, I'd like to admit
5 Exhibit 142, Your Honor.

6 THE COURT: From Zia?

7 MR. WORDEN: No objection, Your Honor.

8 THE COURT: Objection admit- -- Exhibit 142 is
9 admitted.

10 MR. WORDEN: Your Honor, I'll -- with the
11 understanding we discussed?

12 MR. FISHER: Yes, absolutely.

13 MR. WORDEN: No problem, Your Honor. Thank you.
14 (Joint Exhibit 142 was admitted into evidence.)

15 Q. (BY MR. FISHER): And, Mr. Perez, do you
16 recognize this e-mail from March 27, 2019, on which
17 you were copied from Sean Perez to Mr. Turnipseed at
18 Larue Road?

19 A. I do remember this e-mail.

20 Q. And attached to this e-mail, again, this is Zia Ag
21 Consulting letterhead, correct?

22 A. Yes, Mr. Fisher.

23 Q. This letter is dated a few days later than the last
24 one we looked at. This is March 25th, 2019; is that
25 right?

1 A. Yes, Mr. Fisher.

2 Q. And it appears to have the signature of Sean Perez on
3 this letter. Does that appear to be his signature?

4 A. Yes, Mr. Fisher.

5 Q. Okay. And this letter was again created to send to
6 Larue Road, your bank; is that right?

7 A. Yes. At their request, we're creating this document
8 so that CLA can put a different valuation on these cattle,
9 as per Jason Turnipseed's request.

10 Q. But the title of it is "cost plus purchase
11 arrangement," right?

12 A. Yes, sir.

13 Q. This letter was confirming for your bank essentially
14 the terms of what was going on with the cost plus agreement,
15 correct?

16 A. A simple "yes" or "no" I don't believe depicts what is
17 going on here.

18 Q. Does this letter, confirm, even if in part, what
19 you're contending are the terms of the cost plus agreement?

20 A. This document was created so that CLA could value the
21 cattle a different way than however they were going to value
22 them -- of which, you need to understand, Mr. Fisher, we are
23 not privy to what those guys are doing, at all. The way
24 they report to whoever they report to is not something we
25 know anything about.

1 Q. We've gone through several e-mails now that I've asked
2 you about where Jason Turnipseed, Mike Dancey, the people at
3 Larue Road are asking for -- talking about the cost plus
4 contract in writing, talking about the cost plus
5 confirmation. During this entire time, did you ever just
6 call Bob and say, "Bob, can you send me an e-mail confirming
7 that we have this -- this cost plus contract"?

8 A. I think that it would be very hard to accuse Zia of
9 not communicating because we were communicating consistently
10 through e-mail.

11 Q. Mr. Perez, I'm not accusing Zia of anything with
12 respect to communication. My question to you was, did you
13 not, up to this point, between February 4th and
14 March 25th of 2019 -- you know, instead of having Sean
15 Perez write this letter, at this point, had you not simply
16 reached out to Bob Scherer and asked, "Bob, can you send me
17 a letter confirming we have a deal, confirming this
18 contract"?

19 A. Mr. Fisher, Bob Scherer and I talked periodically.
20 Not only did I talk with Mr. Scherer, I also talked to
21 Mr. Hueser. And I tried to talk to Mr. Nelson as well, but
22 I didn't have a lot of conversations with Mr. Nelson.

23 Q. So your answer is, no, you had not reached out and
24 simply asked Mr. Scherer to send a letter confirming this
25 plus contract?

1 A. My answer is not "no." And it's not "yes," either.
2 I'm saying that I was talking to Mr. Scherer all the time,
3 trying get as much verification about our deal on the cost
4 plus contract.

5 Q. You didn't have -- you had your son -- or I'm sorry,
6 let me back up.

7 Your son put together this letter explaining the
8 effect of this cost plus arrangement, correct?

9 A. He did put this letter together for a very specific
10 reason: Not having anything to do with anything else, but
11 the way they value the cattle.

12 Q. You didn't ask Mr. Scherer for a letter confirming the
13 cost plus deal, correct?

14 A. Mr. Scherer doesn't like to put things in writing.

15 Q. Mr. Perez -- Mr. Perez, I've asked you this several
16 times. It's a "yes" or "no" question: Did you or did you
17 not ask Mr. Scherer to put a letter together confirming the
18 cost plus arrangement?

19 MR. WORDEN: It's been asked and answered.

20 MR. FISHER: It hasn't been answered, Your Honor.

21 THE COURT: Okay. Answer the question.

22 A. I spoke to Mr. Scherer several times. I asked
23 Mr. Scherer if we could document things more, and
24 Mr. Scherer would always say that he would see what he could
25 do.

1 Q. (BY MR. FISHER): And my question is: Did you
2 ever ask Mr. Scherer to write a letter, one
3 sentence, "we have a deal on this cost plus
4 proposal"? "Yes" or "no"?

5 A. He already sent an e-mail confirming that.

6 Q. Okay. And that is what you consider the confirmation?

7 A. Yes. Yes, Mr. Fisher, that's what I consider the
8 confirmation.

9 Q. And had you requested a letter from anyone else at
10 Tyson? You mentioned Mr. Hueser, Mr. Nelson?

11 A. I e-mailed Mr. Hueser. I've called Mr. Hueser. I
12 asked if there was a way to memorialize, further memorialize
13 for our bank, our relationship, and Mr. Hueser gave me some
14 response like "the wording is too vague."

15 But this whole time, what Larue Capital is trying
16 to do is they're trying to structure out a multiyear
17 business arrangement whereby Zia/Tyson does a multiyear
18 contract. So they have intentions that they're trying to
19 set forth that aren't clearly stated here so well.

20 Q. You represented several times today that you have
21 e-mailed Mr. Scherer, Mr. Hueser, requesting papering or
22 documentation of the agreement. I don't recall seeing any
23 such e-mail. Is there an e-mail that you can recollect that
24 you could point us to --

25 A. Mr. Fisher --

1 Q. -- when that request was made?

2 A. -- I sent an e-mail to Mr. Scherer with a contract.
3 He responded that he accepted the contract, and that's what
4 we have.

5 Q. Other than that February 4th e-mail that we've gone
6 over several times now, are there any other e-mails you
7 recall sending?

8 A. No, Mr. Fisher.

9 Q. Thank you. Mr. Perez, I'm putting up what's already
10 been admitted as Exhibit Number 149 for you to review.
11 Ms. Diamond went through this e-mail with you briefly. Do
12 you recall that? This February 10th [sic] e-mail from you
13 to Bob Scherer?

14 A. Yes, Mr. Fisher.

15 Q. And there was an attachment to this e-mail. And what
16 does this attachment represent?

17 A. Can you blow it up a little bit, please?

18 Q. Certainly. That's as far as I can blow it up and get
19 it all in. If there's something, in particular...

20 A. Why don't -- if you don't mind, why don't we work on
21 the left side of the spreadsheet and the box at the bottom.

22 Q. I'll just go over here to the left with that
23 information. Okay. There we go.

24 A. Can we scroll back up to the top of the e-mail one
25 more time, please?

1 Q. Certainly.

2 A. And then, if you don't mind, go back down to the
3 spreadsheet. I'll just...

4 Q. Certainly. Is there anything you need to see on the
5 right side?

6 A. No, I think we're good.

7 Q. Okay. All right. Is this another update?

8 A. Would you just -- can you scroll it up just a little
9 bit more, please.

10 Q. Certainly. You want me to go back to the e-mail?

11 A. That's plenty good right there. Thanks.

12 Q. Okay. Sure. And on this update, again, now we're
13 into May 10th -- I'm still looking -- is there any
14 indication or any reference to Tyson anywhere on this
15 spreadsheet?

16 A. No, Mr. Fisher.

17 MR. WORDEN: Excuse me, Your Honor. If I could
18 just ask Mr. Fisher -- there's more to the spreadsheet
19 below. Could we just see all of the spreadsheet?

20 THE COURT: Mr. Fisher, just make sure you scroll
21 all the way down. And, Mr. Perez, just feel free to ask,
22 like you're doing, just ask him to show all of it in case
23 there's places you need to look at.

24 A. I apologize, I did not know --

25 Q. (BY MR. FISHER): I apologize for that,

1 Mr. Perez --

2 A. -- there was more to this spreadsheet. I apologize.

3 Q. It's my fault. I'm sorry.

4 A. No way I could have -- I didn't know.

5 Q. You want me to blow up the left side for you again?

6 A. No, that's enough. If you could go down to the box
7 again, I'd appreciate it.

8 Q. Sure.

9 A. And then can we go to the box on the other one that
10 was previous?

11 Q. Of course.

12 A. Okay. And can we go right back to that other one, so
13 that we end kind of at the end of the document. Please.

14 Q. Your wish is my command. There we are. Is that good?

15 A. Thank you, Mr. Fisher.

16 Q. Certainly. Okay. On this May 10th spreadsheet, any
17 reference to Tyson on this spreadsheet anywhere on the face
18 of it?

19 A. No, Mr. Fisher.

20 Q. And this is May, so we're looking at three months
21 since that February 4th e-mail to Mr. Scherer, correct?

22 A. Yes, Mr. Fisher.

23 Q. And in that three months, has any clarification been
24 added as to who's responsible for these costs that are on
25 the right side of this spreadsheet?

1 A. No, Mr. Fisher.

2 Q. And no direct reference has been -- we're not going to
3 find that \$125 or \$100 per head over costs, no reference to
4 those numbers, on the face of this spreadsheet, correct?

5 A. No, Mr. Fisher.

6 Q. Thank you. I'm going to pull up the
7 May 25th e-mail. You've already been asked about this
8 e-mail this morning. Do you recall that?

9 A. Yes, Mr. Fisher.

10 Q. Is it your understanding on this e-mail that this was
11 sent after Mr. Scherer got the first set of invoices and
12 cattle costs from Prewitt Land and Livestock?

13 A. Yes, Mr. Fisher, that's what it looks like to me.

14 Q. Did this e-mail really come as a surprise to you,
15 Mr. Perez?

16 A. Yes, it did.

17 Q. I don't --

18 A. Could we --

19 Q. I'm sorry. Go ahead.

20 A. Sorry. Since there is a few pages on this e-mail, can
21 we just kind of look at each page, so that -- please?

22 Q. Of course. Of course. Please just let me know when
23 you're ready for me to scroll or zoom. It's a little
24 difficult to get the whole page on the screen to where it's
25 legible, so I apologize.

1 A. That's okay. After what just happened, I just want to
2 see what's all in the e-mail. Please.

3 Q. Do you need to see the next page?

4 A. Is there another page?

5 Q. There is. There are two more pages.

6 A. Okay. Hold on one second, please. I had no idea. I
7 have no way of knowing. Okie-doke.

8 MR. WORDEN: There's still another page.

9 MR. FISHER: Yeah, I apologize. Did I get it?

10 A. That's page 1, 2, and then 3.

11 Q. (BY MR. FISHER): Oh, I'm sorry. I thought I
12 showed you 3. I apologize, I didn't mean to do
13 that.

14 A. Okie-doke. Can you stop right there, please?

15 Q. Yes.

16 A. Right there. Thanks. Is there any way to, like, blow
17 it up one more time?

18 Q. Of course.

19 A. Okay. That's perfect. Thank you.

20 I'm sorry, the question was?

21 Q. I haven't asked a question yet, but I will get to that
22 right now.

23 Now that you've had a chance to look back over
24 this exhibit, this was May 25th of 2019, correct?

25 A. Yes, it was.

1 Q. And you first sent what you are now contending is the
2 cost plus contract to Mr. Scherer on February 4th,
3 correct?

4 A. Yes, sir.

5 Q. Okay. So in the span of that almost four months, can
6 you point us to an e-mail where you ever informed
7 Mr. Scherer that he would be receiving invoices for the cost
8 of the cattle?

9 A. No, sir.

10 Q. Did you respond to this e-mail?

11 A. I think I called him on the phone.

12 Q. But we don't have any kind of e-mail response that you
13 recall?

14 A. I don't recall.

15 Q. Was it clear to you when you saw "what are you trying
16 to do here?" that there obviously was disconnect?

17 A. Can we scroll down to the first document? Please.

18 Q. Okay. Sure. Is there a certain part?

19 A. If you can scroll down just a little bit more. That's
20 good. Thanks.

21 When I look at this invoice and I look at what we
22 said the cattle were going to cost (indicating), I see no
23 disconnect.

24 Q. And you're pointing to the spreadsheet here?

25 A. Correct. We said the cattle were going to cost about

1 1,800-and-something dollars. And, sure enough, this is an
2 invoice for about \$1,900, so no.

3 Q. And what you're calling -- this is the contract, right
4 (indicating)?

5 A. Correct.

6 Q. And, again, there is nothing on the contract
7 indicating who is responsible for those costs, is there?

8 A. I testified to that.

9 Q. Okay. I wanted to confirm that.

10 A. But you're asking me if there's a big disconnect. And
11 I'm saying there's very little disconnect from what I've
12 said for five or six months. And now it's verified on this
13 invoice: Plus the \$125. Now the \$125 is blatantly obvious
14 in the invoice.

15 Q. How is the \$125 blatantly obvious?

16 A. Scroll down to the invoice, please. It says right
17 there (reading), "Premium natural cattle, \$125."

18 Q. But, again, that's not anywhere in the spreadsheet, is
19 it?

20 A. I testified that it was not, sir. Not on that --

21 Q. Okay.

22 A. Again, imagine that spreadsheet having quite a few
23 layers behind it that has all the detail. This verifies
24 that the destination we were headed to financially, we were
25 going to arrive at perfectly.

1 Q. So that 125 is obvious right here (indicating),
2 correct?

3 A. Yes, sir.

4 Q. Okay. On this invoice dated May 24th --

5 A. Yes, sir.

6 Q. -- four months after you sent the February 4th
7 e-mail?

8 A. That's correct.

9 Q. That's the first time we see the number "\$125," isn't
10 it?

11 A. That's \$125. It's on the invoice. It's absolutely
12 correct.

13 Q. Thank you, sir.

14 A. We're just following through with what we said we were
15 going to do.

16 MR. FISHER: And, now, I'd like to admit Exhibit
17 Number 152, please, Your Honor.

18 THE COURT: From Tyson -- or from Zia?

19 MR. WORDEN: No objection, Your Honor.

20 THE COURT: Exhibit 152 is admitted.

21 (Joint Exhibit 152 was admitted into evidence.)

22 Q. (BY MR. FISHER): Okay. Mr. Perez, instead of
23 trying to work out something here, we have an e-mail
24 from Doug Penner with Zia, correct, dated June 3rd
25 of 2019?

1 A. That's correct.

2 Q. And that is to Kendall Martens. Who is Kendall
3 Martens?

4 A. He's the owner of a feedlot called K&M [sic].

5 Q. And you're the first person copied on the e-mail,
6 right?

7 A. That's correct.

8 Q. And in this e-mail -- and, again, June 3rd, about a
9 week after Mr. Scherer's e-mail we just discussed, correct?

10 A. I'm sorry. The question was what?

11 Q. Certainly. I apologize. June 3rd is about a week
12 after the May 25th e-mail --

13 A. The May 25th e-mail --

14 Q. Yes.

15 A. -- approximately? Yes.

16 Q. And you asked Mr. Martens, "We would like" -- I'm
17 sorry, I just blocked it out. In that first sentence
18 (reading), "We would like to have you send us a draft
19 invoice so we can make sure we're all on the same page as to
20 the costs."

21 Did I read that right?

22 A. Yes, Mr. Fisher.

23 Q. I think we've established that Mr. Martens is the
24 owner of KM Feedyards?

25 A. Yes, Mr. Fisher.

1 Q. And the Zia team is "looking to make sure we're all on
2 the same page as to costs" with this e-mail, correct?

3 A. That is 100 percent correct.

4 Q. I don't see Bob Scherer's name anywhere copied on this
5 e-mail, do you?

6 A. No, he's not copied on this e-mail.

7 Q. I don't see anybody from Tyson copied on this e-mail,
8 do you?

9 A. No, sir.

10 Q. So you're looking to make sure everybody's on the same
11 page, but you don't include anybody from Tyson --

12 A. Well --

13 Q. -- is that right?

14 A. -- Tyson is about to get all these invoices.

15 Q. It's not exactly transparent, is it, Mr. Perez?

16 A. Mr. Fisher, this -- Doug Penner was our chief
17 financial officer back then. And he spent most of his time
18 when he was with Zia working on reconciling numbers and
19 dollars with feedlots. He never spoke to Tyson, so I'm sure
20 he felt that his duty was to get the numbers reconciled so
21 we got the right cost, freight, feed, et cetera, on the
22 cattle. So that's what he's attempting to do here.

23 Q. That's your speculation on what he's attempting to do,
24 correct?

25 A. He works for us, so I don't have to speculate. He's

1 giving instruction to the feedlot how we're going to report
2 these costs to Tyson so that they are accurate.

3 Q. Zia selected K&M Feeders [sic] as the feedyard for
4 these cattle?

5 A. One of the feeders. As you can see, there's a list of
6 feeders here on the left side of the cost plus model.

7 Q. But Zia chose not to include anybody from Tyson on
8 trying to get on the same page, did you?

9 A. Doug Penner chose to not send the e-mail to Tyson.

10 Q. And as you said, Doug Penner is on the Zia team,
11 right?

12 A. He is. But Doug Penner doesn't talk to Zia [sic]
13 ever. About anything.

14 Q. Thank you, Mr. Perez.

15 MR. FISHER: I'd like to admit Exhibit 153,
16 please, Your Honor.

17 THE COURT: Zia's position?

18 MR. WORDEN: There's no objection, Your Honor.

19 Q. (BY MR. FISHER): And I wanted to know before I
20 move to Exhibit 153, Mr. Perez, this was sent at --
21 I apologize, that's a little difficult trying to
22 make a circle here -- 12:03 P.M.; is that correct.

23 A. Yes, sir. I can't see the date, but that's correct on
24 the time.

25 Q. And that's my fault. Let me clear that out.

1 June 3rd, 2019. June 3rd, 2019, 12:03 P.M., correct?

2 A. Yes, sir.

3 THE COURT: Okay. Exhibit 153 is admitted.

4 (Joint Exhibit 153 was admitted into evidence.)

5 Q. (BY MR. FISHER): Exhibit 153, another e-mail
6 from Doug Penner, June 3rd, 12:16 P.M. This is
7 just a matter of minutes later, correct?

8 A. It seems that way, yes.

9 Q. And this e-mail is also from Doug Penner, but this
10 time to Ty Rumford, correct?

11 A. Yes, Mr. Fisher.

12 Q. And Mr. Rumford is another feedyard owner, isn't he?

13 A. Yes, Mr. Fisher.

14 Q. And it was represented in this e-mail that (reading)
15 "The prime cattle that shipped on 5-24" -- I'm going to skip
16 over the lot numbers -- "are part of a cost plus deal with
17 Tyson."

18 Did I read that right?

19 A. Yes, Mr. Fisher.

20 Q. And you were copied on this e-mail, weren't you?

21 A. Yes, Mr. Fisher.

22 Q. As well as three other members of the Zia team, right?

23 A. Yes, Mr. Fisher.

24 Q. But, again, Bob Scherer is not copied on this e-mail,
25 is he?

1 A. No, Mr. Fisher.

2 Q. Nobody from Tyson is copied on this e-mail?

3 A. No, Mr. Fisher.

4 Q. Okay. And, by this time, a week had passed. And,
5 during that week, you were made aware that Mr. Scherer
6 wasn't on the same page with you on this -- these invoices,
7 weren't you?

8 A. We had a deal. Zia was going to fulfill the deal.

9 Q. With or without Tyson?

10 A. Mr. Scherer had ample chance to talk to me because I
11 called him and Mr. Hueser and Mr. Nelson.

12 Q. Of course there aren't any records reflecting that,
13 correct?

14 A. Why would I not want to talk to them?

15 Q. There aren't any e-mails reflecting that?

16 A. Why would I not want to talk to them?

17 Q. But you didn't bother to copy them, correct?

18 A. They're not copied on this e-mail, but they're about
19 to get the invoice for all these cattle.

20 Q. Thanks, Mr. Perez.

21 MR. FISHER: And, Your Honor, I'd next like to
22 admit Exhibit 154.

23 THE COURT: From Zia?

24 MR. WORDEN: No objection, Your Honor.

25 THE COURT: Exhibit 154 is admitted.

1 MR. FISHER: Thank you, Your Honor.

2 (Joint Exhibit 154 was admitted into evidence.)

3 Q. (BY MR. FISHER): And then you followed up.

4 This is Exhibit 154, June 3rd, 2019, an e-mail
5 from you to Doug Penner and Ty Rumford and three
6 others on the Zia team, correct?

7 A. Yes, Mr. Fisher.

8 Q. And these are your words (reading): "Please make sure
9 we are all on the same page before sending anything to
10 Tyson," correct?

11 A. That is correct. We didn't want to overcharge Tyson.
12 We want --

13 Q. You also didn't want to include Tyson on the e-mail,
14 did you?

15 A. Tyson is about to receive all these invoices.

16 Q. And you're not going to include them in the
17 communications regarding those invoices, are you?

18 A. They were not included on this document, no, sir.

19 MR. FISHER: Your Honor, I'd like, at this time,
20 to admit Exhibit 155.

21 THE COURT: From Zia?

22 MR. WORDEN: No objection, Your Honor.

23 THE COURT: Document 155 is admitted.

24 (Joint Exhibit 155 was admitted into evidence.)

25 MR. FISHER: Thank you, Your Honor.

1 Q. (BY MR. FISHER): Now, we're looking at another
2 e-mail from the Zia team to Diana Garcia dated
3 June 5th, a couple of days later; is that correct?

4 A. Yes, Mr. Fisher.

5 Q. And it looks like there are some invoices being
6 requested. And I apologize, let me back up. Diana Garcia
7 is with High Choice Feeders, another feedyard; is that
8 right?

9 A. That's a High Choice Feeders e-mail address, so I'm
10 assuming yes. I don't know who she is.

11 Q. Okay. And some information related to some bills,
12 some feed bills, are being requested from her; is that
13 right?

14 A. Mr. Chavez is requesting the end-of-month feed bills
15 from the feedlot.

16 Q. It says (reading), "We need to gather up -- gather
17 costs up for the cattle that shipped two weeks ago to bill
18 to Tyson, and time is of the essence."

19 Did I read that right?

20 A. You did, yes, sir.

21 Q. And, again, Tyson's not copied on this e-mail, right?

22 A. They're not. We feed a lot of cattle and we usually
23 don't copy Tyson on our requests for bills.

24 MR. FISHER: Your Honor, at this time, I'd ask to
25 admit Exhibit 158.

1 THE COURT: What's Zia as position on 158?

2 MR. WORDEN: No objection, Your Honor.

3 THE COURT: 158 is admitted.

4 (Joint Exhibit 158 was admitted into evidence.)

5 Q. (BY MR. FISHER): Okay. Mr. Perez, do you
6 recognize this June 7th e-mail from Phil Chavez
7 with the Zia team to Danny Hermann?

8 A. Yes, Mr. Fisher.

9 Q. And Danny Hermann is with Ford County Feeders,
10 correct?

11 A. Yes, Mr. Fisher.

12 Q. It says here (reading), "Hello, Danny, I've been
13 instructed to send you a sample invoice on how to invoice
14 Tyson for the 5-31-19 shipment."

15 Did I read that correctly?

16 A. Yes, Mr. Fisher.

17 Q. And on the next page is a document. What is that --
18 do you recognize what that document is?

19 A. It's a -- it's a list of expenses. Again, cattle
20 cost; freight; vet and med tags; the Ford feed bill; cattle
21 interest, for interest and feed; and a premium.

22 Q. Okay. There -- these are costs feedyard costs,
23 correct?

24 A. Well, cattle cost is not the feedyard cost.

25 Q. You are correct.

1 A. The Ford feed bill is definitely a feed bill cost,
2 yes.

3 Q. These are costs in a sample invoice that you-all
4 prepared for Ford County Feeders to send to Tyson, correct?

5 A. Yes, Mr. Fisher.

6 Q. And these are costs that Zia contends are owed by
7 Tyson due to the cost plus spreadsheet, correct?

8 A. Yes, Mr. Fisher.

9 Q. Okay. So I've asked you with the original spreadsheet
10 we've got there, as well as several that have followed, if
11 there's any kind of calculation or explanation of the cost
12 numbers. And, specifically, I'll refer to --

13 MR. FISHER: If I may approach the whiteboard,
14 Your Honor?

15 THE COURT: Yes.

16 Q. (BY MR. FISHER): Can you see this all right,
17 Mr. Perez?

18 A. Yes, sir.

19 Q. I asked you about this first row. This --

20 (Reporter interruption for clarification.)

21 Mr. Perez, do you recall that I asked you about
22 this figure, the \$198,467.65 in costs?

23 A. Yes, Mr. Fisher.

24 Q. And I asked you if there's a breakdown of these costs
25 anywhere on this spreadsheet, and you told me there weren't,

1 correct?

2 A. Not on the face of this spreadsheet, no, sir.

3 Q. Thank you.

4 But now we go back to Exhibit 158, June 7th,
5 2019; we've got an explanation. And I realize these aren't
6 the Burch Ranch cattle, but we've got a breakdown of these
7 costs, correct?

8 A. Yes, Mr. Fisher.

9 Q. And this invoice was prepared by Zia for Ford County
10 Feeders to use in invoicing Tyson, correct?

11 A. Yes, Mr. Fisher.

12 Q. So over four months later, an invoice is going to be
13 sent to Tyson that finally has an explanation of costs,
14 right?

15 A. Would you mind scrolling down? It looks like there's
16 another piece of paper there.

17 Q. (Complying.)

18 A. Thank you.

19 Q. Certainly.

20 Is that accurate, Mr. Perez?

21 A. Yes. Yes, Mr. Fisher.

22 Q. Thank you.

23 MR. FISHER: And then, if I may admit
24 Exhibit 159, Your Honor?

25 THE COURT: What's the plaintiff's position on

1 159?

2 MR. WORDEN: No, no objection.

3 THE COURT: Exhibit 159 is admitted.

4 (Joint Exhibit 159 was admitted into evidence.)

5 MR. FISHER: Thank you, Your Honor.

6 Q. (BY MR. FISHER): And then we have this e-mail,

7 Mr. Perez, in Exhibit 159 from a few minutes later

8 on June 7th of 2019, to High Choice Feeders. To

9 Ty Rumford, correct?

10 A. Yes, Mr. Fisher.

11 Q. And here we have a similar body to the e-mail

12 (reading), "Hello, Ty, I've been instructed to send you a

13 sample invoice on how to invoice Tyson for the 5-24-19

14 shipment."

15 Did I read that correctly?

16 A. Yes, Mr. Fisher.

17 Q. Again, nobody from Tyson is copied on this e-mail, are

18 they?

19 A. No, Mr. Fisher.

20 Q. And, on the next two pages -- I'll give you a chance

21 to look at both of them. Let me know when you're ready for

22 me to scroll to the next, please.

23 A. Okie-doke. Thank you, sir.

24 Q. There is another example of invoices prepared by Zia

25 for feeders to use to bill Tyson under the cost plus

1 spreadsheet, correct?

2 A. That is correct, Mr. Fisher.

3 Would you mind scrolling down to the last
4 page one more time?

5 Q. Certainly.

6 A. Is that it? Is that the last page?

7 Q. Yes, it is.

8 A. Thanks.

9 Q. Okay. You testified a couple of different times this
10 morning that one of the reasons you created the cost plus
11 spreadsheet was not only for Zia's benefit, but to help
12 Tyson out. Do you recall that?

13 A. Yes, Mr. Fisher.

14 Q. But in putting these invoices together, you didn't
15 include Tyson on that, did you?

16 A. No, Mr. Fisher.

17 MR. FISHER: Okay. Your Honor, at this time I'd
18 ask to admit Exhibit 156.

19 THE COURT: What's Zia's position on Exhibit 156?

20 MR. WORDEN: No objection, Your Honor.

21 THE COURT: 156 is admitted.

22 (Joint Exhibit 156 was admitted into evidence.)

23 MR. FISHER: Thank you, Your Honor.

24 Q. (BY MR. FISHER): Mr. Perez, do you remember
25 this e-mail from Mike Rogers on June 6th on which

1 you were copied?

2 A. I do remember this e-mail.

3 Q. Okay. And the e-mail is addressed to Mike Dancey with
4 Larue Road, correct?

5 A. Yes, sir.

6 Q. And, in the second sentence of that e-mail, it states
7 (reading), "Tyson has not been settling up correctly to this
8 point."

9 Did I read that correct?

10 A. That is correct.

11 Q. And then, in the next sentence, it says (reading),
12 "Narciso and Sean are working on getting this straightened
13 out."

14 Did I read that right?

15 A. Yes, it is [sic].

16 Q. And you were trying to straighten out some
17 discrepancies in the settlements, it says in that last full
18 line; is that correct?

19 A. That's correct.

20 Q. So you could (reading) "...show Tyson what is
21 happening"?

22 Am I reading that right?

23 A. If I could show Tyson what is happening? I'm sorry.

24 Q. Yes, I'm sorry. (Reading) "...to show Tyson what is
25 happening" (indicating).

1 A. That's what it says, yes, Mr. Fisher.

2 Q. Okay. And Mike Rogers appears to be communicating to
3 the bank, trying to straighten out something of a
4 misunderstanding. Is that how you read that?

5 A. Mike Rogers is clearly communicating to Mike Dancey
6 that we're working on figuring out how to sort these numbers
7 out, because we're not on the same page with Tyson.

8 Q. Had it been communicated to Larue Road that Tyson
9 completely contested the existence of any cost plus
10 agreement, at all?

11 A. Absolutely.

12 Q. It had, okay. Even with this e-mail, that had already
13 been communicated to Larue Road?

14 A. Yes.

15 MR. FISHER: Okay. Mr. Perez, I think that's all
16 the questions I have at this time.

17 THE WITNESS: Thank you, Mr. Fisher.

18 THE COURT: Can I have counsel approach before
19 the redirect?

20 (Bench conference.)

21 How long do you anticipate the redirect will
22 take?

23 MS. DIAMOND: Very brief.

24 THE COURT: How brief is --

25 MS. DIAMOND: I'd say 15 minutes, no more.

1 THE COURT: If it takes more than 20 minutes, I'm
2 going to call you back up and we're going to see what's
3 going on.

4 MS. DIAMOND: Okay. Thank you.

5 THE COURT: Okay.

6 (Bench conference concluded.)

7 All right. Ms. Diamond, you may commence with
8 redirect whenever you're ready.

9 MS. DIAMOND: Thank you, Your Honor.

10 **REDIRECT EXAMINATION**

11 Q. (BY MS. DIAMOND): Good afternoon, Mr. Perez.
12 I'd like to pull up Exhibit 17 that's already been
13 admitted. I'm just going to ask a few questions for
14 redirect.

15 Mr. Perez, what does the attachment on this
16 document say?

17 A. (Reading) "Cost plus model."

18 Q. And this is the document where you sent Mr. Scherer
19 the final proposal, the cost plus proposal?

20 A. Yes, ma'am, that's correct.

21 Q. And you've just testified that this says "cost plus
22 model" on the face of the e-mail?

23 A. Yes, Ms. Diamond.

24 Q. What did you do -- what did you ask Mr. Scherer to do
25 with regard to this cost plus model attachment in this

1 e-mail?

2 A. Mr. Scherer had been pressing me to get him a final
3 version of the cost plus proposal. Him and I both
4 understood that the guys in Zia, the team at Zia, were
5 working to put together the documents and all the numbers so
6 that they could reflect the most accurate portrayal of what
7 the cost plus contract was going to look like. And we tried
8 to hurry up and get that done. It took us a few weeks.
9 And, as soon as it was done, we shipped it off to him. And
10 I told him that I had to have confirmation from him before
11 we started shipping cattle to the feedyard.

12 Q. And in this e-mail, specifically what did you ask
13 Mr. Scherer to do with regard to the cost plus model
14 attachment?

15 A. I told him to either accept it, deny it, or let us
16 know if there was any problems with it, of any kind.

17 Q. What does the text say? What did you actually write
18 on the e-mail?

19 A. I wrote (reading), "Look this over and let's talk.
20 Sorry, I've had a busy day" -- because he had been calling
21 me already that day, like pestering me for this document.
22 And I told him that -- again, I told him that if we didn't
23 agree to it, then I couldn't ship the cattle to the
24 feedyard.

25 Q. Why does the cost plus agreement not say "Tyson" on

1 it?

2 A. Because I'm discussing this with one person on the
3 planet, and that's Bob Scherer.

4 Q. Was it made for anyone else besides Mr. Scherer?

5 A. It was made -- this contract was created specifically
6 for Mr. Scherer.

7 Q. Was there any doubt regarding which company would be
8 paying for the cost of the cattle, freight, feed, interest,
9 premium?

10 MR. FISHER: Objection, Your Honor. That calls
11 for speculation.

12 MS. DIAMOND: I'm asking him to --

13 THE COURT: I'll overrule. Go ahead.

14 A. There was no doubt it was for Tyson. It was for Bob
15 Scherer.

16 Q. (BY MS. DIAMOND): Can we pull up Exhibit 18,
17 please, Ms. Gallagher. And zoom in on the bottom.

18 The February 4th, 2019, cost plus agreement
19 that we have blown up has an estimated cost to Tyson
20 specifically of 16,308 --

21 (Discussion off the record.)

22 16,308,900 --

23 (Discussion off the record.)

24 THE COURT: We're just waiting for it to be
25 pulled up. One second.

1 Q. (BY MS. DIAMOND): So Mr. Fisher asked you
2 several times, multiple times, where the \$125
3 premium, where the \$100 premium was on this Exhibit
4 18 that's blown up before us. So maybe you could
5 walk over to this blowup, and I'll ask you a
6 question about what specific total cost is
7 represented on this cost plus proposal that was sent
8 to Mr. Scherer on February 4th, 2019, as we've
9 already discussed prior.

10 A. Yes, ma'am.

11 Q. What is the total specific cost that is written on
12 Exhibit 18, February 4th, 2019, cost plus proposal?

13 A. \$16,308,996.44.

14 Q. And so that was the amount that the proposal that you
15 presented to Mr. Scherer on February 4th, 2019, was
16 intended to be owed by Tyson?

17 A. Yes, ma'am.

18 Q. And at the end of the performance under this contract
19 when everything was settled out, what was the total cost to
20 Tyson?

21 A. I think we need to pull up one of the exhibits in the
22 end. But my recollection tells me that at the end of this
23 whole journey that the total cost was \$16,200,000. So five
24 or six months later, we came in \$100,000 under budget on all
25 these cattle.

1 Q. So the total cost was less than it was even projected?

2 A. Not only did we tell them that we were going to do
3 this, we arrived, and the cattle were cheaper. So most of
4 the day, we've been talking about "what if, what if, what
5 if." This is not "what if" anymore. The final cost was
6 \$16,200,000.

7 Q. Because the cost plus agreement you sent to
8 Mr. Scherer on February 4th doesn't tell Tyson that it has
9 to pay \$125, correct? It tells them Tyson has to pay
10 \$16,308,996.44?

11 A. Yes, Ms. Diamond.

12 Q. And just to confirm, Mr. Perez, before February 4th,
13 2019, did Tyson have any claim or own any of the GAP cattle
14 listed in this cost plus proposal?

15 A. Until Bob Scherer sent the e-mail back accepting our
16 cost plus contract on February the 4th, we did not have a
17 deal. We may have spoken about cattle, we might have talked
18 in generalities, but we did not have a deal until that day.
19 I was not authorized to make a deal with Bob, if it wasn't
20 this deal.

21 Q. You testified that you printed out a copy of the cost
22 plus proposal and brought it to hand to Mr. Scherer in
23 person on January 14th, 2019, in Happy, Texas. Was that
24 the final version of the cost plus proposal that you sent to
25 him on February 4th?

1 A. No, ma'am. The one that I took with me on January the
2 14th was one that was going to be very, very close. And I
3 told him that I had to get back to the team. The team would
4 fine-tune all these details, and we would send him a final
5 version of this cost plus proposal, meant-to-be contract, at
6 that time.

7 Q. And when did you send Mr. Scherer the final cost plus
8 proposal?

9 A. I sent him a final cost plus proposal on February the
10 4th, 2019.

11 Q. And, in your view, after Mr. Scherer responded on
12 February 4th, 2019, "This looks good, get them in a finish
13 yard ASAP, please," what was your view of what the proposal
14 became at that point?

15 A. The proposal, in my mind, we made him an offer, he
16 accepted it. He accepted it through e-mail, in writing, and
17 we consummated a deal on these cattle.

18 Q. You testified about the prior deals and transactions
19 you entered into with Tyson in the last 20 years. In those
20 last 20 years, have you ever had a document for the sale of
21 cattle where Tyson and Zia signed it or where Tyson and you
22 signed it?

23 A. No, ma'am. I had something better.

24 Q. What was that?

25 A. I had the word of Bruce Bass and Brad Brandenburg,

1 because, when they bought something, they never backed out.
2 And there was never any confusion because they know what
3 they're up to.

4 Q. And when you were dealing with Mr. Scherer,
5 specifically with regard to this transaction, would Tyson or
6 Mr. Scherer ever have sent you a written document that looks
7 like a formal contract that might satisfy an auditor?

8 A. No, ma'am.

9 Q. And why is that?

10 A. Because Tyson doesn't do things like that with me.

11 Q. Did you ever sign a written contract with Tyson saying
12 that you would sell Tyson Zia's GAP cattle at the Nebraska
13 weighted average?

14 A. No, ma'am. In fact, I would have never sold them the
15 cattle like that. Because I think you can tell that we know
16 how to run numbers. We know how to break down the numbers.
17 We can stand by our numbers and we're -- we're a hundred
18 percent spot on, on our numbers.

19 So there's -- this is like any other business.
20 We know our business well and we know that you can't do that
21 with a premium like they offer.

22 Q. Did your discussions with Larue Road Capital, which
23 you've called your "bank," have any bearing between the
24 contract between Zia and Tyson?

25 A. None, whatsoever.

1 Q. And why is that?

2 A. Because Larue Capital is a company that is looking for
3 projects to invest in. And, in this case, Larue Capital
4 and, again, this was a proven concept for Larue Capital.
5 They wanted to get involved because they were looking to
6 build out a 60-month deal. Because, for Larue Capital, if
7 they can park a bunch of money for five years and have a
8 smooth and silky return on investment, then they're excited
9 about doing it.

10 And that's one of the things that Zia does, is
11 they marry funding together with cow-calf operators together
12 with Tyson, together with backgrounders, together with
13 finishers. We orchestrate putting a concert of all these
14 people together, so that we can create long-term solutions
15 to short-term problems.

16 Q. And what would be some short-term deals or short-term
17 problems that you might discuss with regard to Tyson?

18 A. Tyson needs cattle. And if you can offer something to
19 Tyson that is difficult for other people to provide in
20 quantities that are relevant to them, then, all of a sudden,
21 instead of being a little rancher in between two points on a
22 map that barely gets any rain, you can harness those
23 ranchers together and give those people an opportunity to
24 present themselves at a much more value-added level to
25 someone like Tyson.

1 Q. But then, even though Zia has sold Tyson, as you've
2 testified, millions of dollars of cattle in the last
3 20 years, you did this all without a written formal
4 contract?

5 A. That's correct.

6 MS. DIAMOND: Thank you, Mr. Perez. No further
7 questions.

8 THE COURT: All right. Thank you for your
9 testimony, sir. You can return to your counsel's table.
10 Zia may call its next witness.

11 MR. WORDEN: Thank you, Your Honor. I'd like to
12 call Bob Scherer, please.

13 THE COURT: All right.

14 **ROBERT SCHERER,**

15 After having been first duly sworn, did make the
16 following answers:

17 **DIRECT EXAMINATION**

18 THE COURT: Thank you. Have a seat. State your
19 name and please spell it for the record.

20 THE WITNESS: My name is Robert Scherer,
21 S-C-H-E-R-E-R.

22 Q. (BY MR. WORDEN): Good afternoon, Mr. Scherer.

23 A. Good afternoon.

24 Q. You remember me? We met about 14 months ago in May of
25 2021 when I came up to Dakota Dunes and took your

1 deposition.

2 A. Correct.

3 Q. So I take it your testimony today is that on the board
4 (indicating), that's not the contract, correct?

5 A. Correct.

6 Q. What is the contract, in your opinion, between Zia and
7 Tyson for the cattle we've been discussing the last
8 two days?

9 A. As I look at this, the left -- draw a line right down
10 the middle from the pink back to the left side: This is an
11 inventory. The contract or agreement Tyson has on the
12 cattle are Nebraska weighted average, dressed, delivered to
13 Lexington, with a per-head premium.

14 Q. Where do I go to find that contract?

15 A. It was probably verbal on a phone.

16 Q. There is no writing anywhere in the universe
17 memorializing the contract you just told the jury is the
18 applicable contract for these 9,000 head of cattle, correct?

19 A. To the best of my knowledge, that's the way the job
20 was done.

21 Q. So Nebraska weighted average --

22 A. Yes.

23 Q. -- dressed and delivered to Lexington, correct?

24 A. Correct.

25 Q. So did you make a proposal to Zia for this cattle?

1 A. On these cattle?

2 Q. Yes.

3 A. No, sir.

4 Q. Did you have any discussions with Zia, in your mind,
5 as to how you would pay for these cattle?

6 A. If you go back to 2018, which we have done year over
7 year over year, these cattle did not grow on a tree like
8 conventional cattle. So we book these cattle March and
9 April the year prior and provide a slot or a number per
10 month.

11 Q. If the jury wanted to review the terms of your
12 proposal to Zia, where would they look to find that?

13 A. Have to go back and see if we had the records for the
14 pricing.

15 Q. But you recall you told Mr. Perez that in a telephone
16 call that was verbal, correct?

17 A. When I -- when I had the natural program taken away
18 from me in 2017, to take some burden off my plate, I came
19 back into it in August of 2018. So I would not have priced
20 these cattle or made the agreement for 2019 with him.

21 Q. So you're --

22 A. John Gerber would have.

23 Q. Pardon?

24 A. John Gerber would have, the vice president.

25 Q. Is he going to come and testify what the verbal

1 agreement is with Zia?

2 A. I don't think so.

3 Q. Are you aware of anywhere where Zia accepted this
4 discussed verbal offer in April or spring of 2018?

5 A. I don't have any knowledge of that.

6 Q. All right. So the contract you say exists is not in
7 writing, and nowhere would we go to find that it was ever
8 accepted; fair enough?

9 A. Fair enough.

10 Q. All right. And Nebraska weighted average -- so what's
11 the "Nebraska weighted average"?

12 A. As Mr. Perez described it yesterday, it is the
13 culmination of trade on dressed beef in the state of
14 Nebraska, delivered.

15 Q. So, if John Gerber had a conversation with Zia now,
16 would that conversation have stated -- well, first of all,
17 do you know anything about what he told Zia?

18 A. I was not part of the conversation.

19 Q. You have no idea, whatsoever, about the verbal
20 discussion anyone had with Zia in the spring of 2018,
21 correct?

22 A. Correct.

23 Q. As you sit here today, you don't have any evidence,
24 documents, or specifics about verbal contracts, whatsoever,
25 related to the cattle Zia delivered pursuant to that model

1 right there (indicating), correct?

2 A. Correct.

3 Q. All right. Let's start back at the beginning,
4 Mr. Scherer.

5 So, first of all, what is your title?

6 A. Associate Director of Cattle Procurement.

7 Q. Yeah, so I noticed Mr. Fisher called you "Associate
8 Director." What do you put on your own LinkedIn page as
9 your position?

10 A. When I originally started it, I was the director of
11 procurement.

12 Q. Okay. So I'm looking at LinkedIn. It says (reading)
13 "Director of Cattle Procurement from May 2015 to the
14 present."

15 A. I've never gone in and changed it.

16 Q. Okay. What has changed since then?

17 A. Job class. Reorganization within the company.

18 Q. So who is the director of cattle procurement today?

19 A. Kevin Bennett and Jacob Bach.

20 Q. When did you cease acting as the director of cattle
21 procurement for Tyson?

22 A. I believe the grade change came into effect in 2015.

23 Q. Meaning you were no longer director in 2019?

24 A. No. Because they were promoting others in other
25 divisions and they realigned all the job classes. So we

1 went from a director back to an associate director.

2 Q. So your LinkedIn says you started in May of 2015.
3 When did you cease being director?

4 A. I believe it was November of that year.

5 Q. All right. You had authority, nonetheless, to
6 negotiate the buy -- the purchase and sale of cattle for
7 Tyson, correct?

8 A. Correct.

9 Q. All right. So whether you were director or associate
10 director, it doesn't really -- there's no question you had
11 the authority to make a deal if you wanted to, correct?

12 A. Correct.

13 Q. Thank you.

14 So where did you grow up?

15 A. I grew up in West Point, Nebraska.

16 Q. All right.

17 A. Cuming County.

18 Q. Did you go to high school there?

19 A. I did.

20 Q. And then what happened next?

21 A. Then I went that summer and worked for IBP.

22 Q. Iowa Beef Processors, correct?

23 A. Yes, sir.

24 Q. Did you have any education after high school?

25 A. I went to Wayne State College for a semester.

1 Q. Okay. And then what was your position when you came
2 to Iowa Beef Processors?

3 A. Hourly.

4 Q. Doing what?

5 A. Pushing beef, sawing cattle, ribbing cattle, loading
6 trucks.

7 Q. What does "pushing beef" mean?

8 A. So you push them. The cattle come into the hot box
9 after harvest; you push them up a rail.

10 Q. What's a "hot box"?

11 A. It's where they chill the cattle.

12 Q. All right.

13 A. 24 hours.

14 Q. So are the cattle alive at that point?

15 A. No, sir, they've been euthanized.

16 Q. Okay. Where did you begin -- in what city did you
17 begin that role?

18 A. West Point, Nebraska.

19 Q. And how long did you stay in West Point, Nebraska?

20 A. Till November of '86.

21 Q. And then what happened?

22 A. Then I went into carcass sales, merchandising.

23 Q. What does "carcass sales" mean?

24 A. So we value the carcasses by grade and by yield. Post
25 USDA grader.

1 Q. And did you at that time also have responsibility for
2 selling it to supermarkets, restaurants?

3 A. Outside -- outside cattle, at that point in time, the
4 company only put a Yield Grade 3 or better in a box.

5 Q. Did your job change at some point after that?

6 A. Yeah, I was promoted in 1990 to Lexington, Nebraska,
7 as assistant sales manager.

8 Q. You're still on the --

9 A. Carcass sales.

10 Q. -- carcass side?

11 Okay. Very good.

12 A. Yes.

13 Q. How long were you on the carcass side?

14 A. Till 2000 -- well, actually, in 2007, I moved up out
15 of the plants into the corporate office as the grading
16 coordinator for the company.

17 Q. What kind of coordinator, sir?

18 A. Grading.

19 Q. What does that mean?

20 A. So I'm responsible for a team of individuals at every
21 plant and how they relate to the USDA and get the cattle
22 graded properly.

23 Q. How many plants does Tyson Fresh Meats have?

24 A. Six, today.

25 Q. Where are they located?

1 A. Pasco, Washington; Lexington, Nebraska; Garden City,
2 Kansas; Amarillo, Texas; Dakota City, Nebraska; and Joslin,
3 Illinois.

4 Q. And how many people work in those plants?

5 A. Depends on the size. Amarillo, Finney County, Dakota
6 City, probably 3,500. Lexington, probably 3,000. It's a
7 little bit smaller plant. Pasco and Joslin, probably about
8 28- to 3,000.

9 Q. Where do you live?

10 A. Currently?

11 Q. Yeah. I don't need your home address, but what city?

12 A. Dakota Dunes, South Dakota.

13 Q. Thank you.

14 When did you move over to the procurement side?

15 A. 2013.

16 Q. And you heard me describe that in opening statement,
17 that procurement differs from the carcass side because
18 you're out looking at the live cattle on the range. Am I
19 correct so far?

20 A. So far.

21 Q. All right. What else did your responsibilities entail
22 in 2013 when you went to the procurement side?

23 A. When I took over the -- all the scale house
24 coordinators and was being mentored by John Gerber, Brad
25 Brandenburg, and Jay Holmes.

1 Q. All right. How long -- when Tyson takes physical
2 possession of the live animal, how long does Tyson have the
3 animal or beef until it is sent off to the supermarket or
4 someone else?

5 A. From the time it's delivered to the plant?

6 Q. Yes.

7 A. So, generally, cattle are delivered; we try to harvest
8 them within a reasonable amount of time, which is generally
9 six to eight hours, because you have to wait for the USDA to
10 come in and do an antemortem, to check the health of the
11 cattle, the mobility of the cattle.

12 From that point, they're harvested, generally 20
13 to 30 hours in a chilling cooler or "hot box." Then, from
14 there, they go to processing, depending on the quality of
15 the cattle as to what run they go into, where -- or what the
16 temperature is in the rounds, and then eventually into a
17 box. And then they might sit in material handling three to
18 five days; shipped to a forward warehouse. And, from there,
19 to a customer.

20 Q. So less than a week, probably, Tyson has physical
21 possession of the animal from the time it's turned in by the
22 rancher or whatnot?

23 A. 0 to 14 days.

24 Q. Okay. Thank you.

25 You're familiar with the term "cost plus

1 agreement," correct?

2 A. I am.

3 Q. And you were familiar with it in 2019, correct?

4 A. I was.

5 Q. All right. Have you ever been involved with any cost
6 plus agreement Tyson's ever had with anyone?

7 A. We have never done a cost plus agreement. The only
8 time it was brought to my attention was late '18, by another
9 entity. We reviewed it. The production and procurement
10 team reviewed it and legal reviewed it. It was about a 10-
11 or 11-page document.

12 Q. All right. And what happened? You decided not to do
13 it?

14 A. We decided it was not in our best interest.

15 Q. Okay. Has Tyson had a cost plus agreement with
16 anyone?

17 A. Not to my knowledge.

18 Q. And what have you done to find out whether Tyson had a
19 cost plus agreement with anyone else?

20 A. I asked my bosses.

21 Q. And who is your bosses?

22 A. Today, it's Chad Martin.

23 Q. All right.

24 A. 2019, it was Justin Nelson.

25 Q. Okay. When did you ask Justin Nelson?

1 A. When did I ask him?

2 Q. Yes.

3 A. When the guys from the other entity brought it to us.

4 Q. And what did Mr. Nelson tell you?

5 A. Send it up to legal.

6 Q. And you asked Mr. Nelson then, "Do we ever do a cost
7 plus"?

8 A. Had we ever done one, yes, and his response was "no."

9 Q. Where is Mr. Nelson now?

10 A. Unemployed with Tyson, but he is a feeder cattle
11 buyer.

12 Q. Okay. Why did he leave; do you know?

13 A. Circumstances that transpired from business.

14 Q. From this transaction, correct?

15 A. No, sir.

16 Q. "No"? What transaction?

17 A. There were issues that came up in the Northwest.

18 Q. What issues?

19 MR. FISHER: Your Honor, we've got an objection.
20 May we approach?

21 THE COURT: Sure.

22 (Bench conference.)

23 MR. FISHER: Your Honor, we had a motion in
24 limine on this. And I am fairly certain of what Counsel is
25 getting into is what's known as the "Easterday litigation,"

1 which is a previous lawsuit involving Tyson that resulted in
2 Mr. -- I'll let you...

3 THE COURT: I'm sorry. Does Mr. Gomez want to
4 address the Court? Come over to the microphone.

5 MR. GOMEZ: So this has to do with a totally
6 separate litigation. The facts aren't, at all, relevant to
7 this case.

8 THE COURT: Mr. Worden isn't asking about the
9 litigation, he's asking about the facts --

10 MR. GOMEZ: Yes.

11 THE COURT: -- of what happened; why did this
12 guy --

13 MR. GOMEZ: I think the only way he can answer
14 the question is by referencing this other litigation.

15 THE COURT: Because he only knows about the
16 litigation, not about the fact underlying the litigation?

17 MR. GOMEZ: No, Mr. Scherer does know the facts
18 underlying the litigation, but I believe, in order to
19 respond to the question, he's going to have to reference
20 this other litigation that this person was involved in.

21 THE COURT: Do you want to advise your client to
22 not discuss the litigation and just discuss the facts of the
23 underlying event that caused this man's termination?

24 MR. GOMEZ: I'm sorry, just one second.

25 THE COURT: That's all right.

1 (Discussion off the record.)

2 MR. FISHER: Your Honor, if we may remind
3 Mr. Scherer about the motion in limine about discussing
4 other litigation? And then Mr. Worden --

5 THE COURT: Okay.

6 MR. FISHER: -- under the motion in limine
7 understanding, will not address --

8 MR. WORDEN: I'm not going to ask about the
9 litigation --

10 THE COURT: Don't talk both at once.

11 MR. WORDEN: I am going to ask about the
12 transaction, which was a cost plus agreement.

13 THE COURT: That's fine. It's three o'clock. I
14 was going to take an afternoon break at 3:30. Why don't we
15 take a break now for 15 minutes. And you-all can talk to
16 the witness -- you about exactly what you're going to ask
17 and, you, about any other potential things that resulted in
18 a lawsuit you want to ask, you can go over that during the
19 break. And you can advise your witness, and everybody can
20 agree, and we'll come back from break, okay?

21 MR. WORDEN: I'm not going to ask anything about
22 the litigation.

23 THE COURT: Any other facts that resulted in
24 litigation, we'll want to have this same talk with the
25 witness while we're on break.

1 MR. WORDEN: Very well.

2 THE COURT: All right. Thank you both.

3 MR. FISHER: Thank you.

4 (Bench conference concluded.)

5 THE COURT: All right. Ladies and gentlemen,
6 we're going to take our mid-afternoon break now for
7 15 minutes. We'll be back in 15 minutes.

8 All rise for the jury.

9 (Jury not present.)

10 All right. You may be seated. Mr. Scherer, you
11 can return to counsel table during the break. Just be back
12 in the stand when the jury comes back, so everybody is ready
13 to go, all right?

14 Thanks, everyone.

15 (A recess was taken.)

16 THE COURT: Thank you. You may be seated.
17 Mr. Scherer, you can return to the witness stand.
18 Are we ready for the jury?

19 MR. WORDEN: Yes, Your Honor.

20 MR. FISHER: Yes, ma'am.

21 THE COURT: Okay.

22 (Jury present.)

23 Thank you. You may be seated.

24 Mr. Worden, you may continue your direct.

25 MR. WORDEN: Thank you, Your Honor.

1 Q. (BY MR. WORDEN): Mr. Scherer, before we broke,
2 I asked you what happened to your old boss,
3 Mr. Nelson. You said there were issues in the
4 northwest. I said, "What issues?" And then there
5 was an objection.

6 What were the issues?

7 A. The issue was we had an entity that committed fraud
8 against Tyson under Justin Nelson's watch.

9 Q. And that was in Washington State, correct?

10 A. Yes, sir.

11 Q. And the contract Tyson had with that entity was a cost
12 plus agreement, correct?

13 A. No, sir.

14 Q. In that arrangement, Tyson fronted the costs to raise
15 the cattle, correct?

16 A. Not to my knowledge.

17 Q. What was the contract with that company?

18 A. I don't price cattle out there, sir.

19 Q. Do you have any idea what the arrangement was?

20 A. No, sir.

21 Q. Do you have any idea what the contract was -- first,
22 was it in writing?

23 A. I don't know.

24 Q. So I said a moment ago it was a cost plus agreement,
25 and you said no. And then I asked if you knew anything

1 about it, and you said you didn't, correct?

2 A. Correct.

3 Q. So you don't know whether it was a cost plus agreement
4 or not, correct?

5 A. Correct.

6 Q. If someone else comes in here and testifies that, in
7 that agreement, Tyson fronted all the costs to raise the
8 calves, you're not going to be here to testify, either way,
9 if that's true or not, correct?

10 A. Correct.

11 Q. Why did you say a minute ago, when I said that it was
12 a cost plus agreement, that it wasn't?

13 A. I'd never heard of a cost plus with Tyson.

14 Q. All right. You started with IBP. IBP was acquired by
15 Tyson, correct?

16 A. 2001, yes.

17 Q. Okay. Thank you. Tyson is one of the four largest
18 meat packers in the world, correct?

19 A. Correct.

20 Q. All right. And, in 2019, Tyson was the only entity
21 buying GAP cattle for Whole Foods, correct?

22 A. Not to my knowledge.

23 Q. Why do you say that?

24 A. Because I was -- had heard rumors of other packers
25 doing it, as well.

1 Q. Other than rumors you may have heard, do you have any
2 basis to believe Tyson was not --

3 A. I did know that Country Natural was doing GAP cattle
4 with Whole Foods, yes.

5 Q. How large is Country National?

6 A. It's a grass-fed program.

7 Q. They're not one of the Big Four, are they?

8 A. No, sir.

9 Q. Okay. So Tyson Fresh Meats -- when you were associate
10 director of procurement, you purchased cattle throughout the
11 West, correct?

12 A. Yes, sir.

13 Q. Okay. Some of those cattle were in New Mexico,
14 correct?

15 A. Yes, sir.

16 Q. And in several other western states?

17 A. Correct.

18 Q. You said -- a moment ago, you mentioned the word
19 "demotion." What did you mean by that?

20 A. So when they took our job classes and dropped them, I
21 went from a director to an associate director.

22 Q. But there was another demotion that you experienced a
23 couple years later, correct?

24 A. Yeah, yeah. They -- they took away the natural
25 program from me. I ran the NHTC program; still managed all

1 the scale houses. According to John Gerber, it was to
2 lighten the load on my plate.

3 Q. They took away the natural cattle program from you
4 because of mismanagement of cattle inventory, correct?

5 A. They said I bought too many cattle, yes.

6 Q. When they told you you were being demoted, they told
7 you, you had mismanaged cattle inventory, correct?

8 A. That was not part of the demotion. The demotion was
9 in job class. That was due to the company's standards.

10 Q. When they took away the naturals from you -- first of
11 all, before that you had been handling the naturals for a
12 couple of years, correct?

13 A. Yes, sir.

14 Q. And then they took away the naturals because they told
15 you you had mismanaged naturals numbers, correct?

16 A. Yes, sir.

17 Q. And part of the -- in fact, the reason you were
18 demoted was because of mismanagement of the transaction you
19 had with Zia a year before where you left the cattle sitting
20 at Beef City for 12 months when they were ready in
21 four months, correct?

22 A. No, sir.

23 Q. So you remember when I went to Dakota City and I took
24 your deposition?

25 A. Yes, sir.

1 Q. We were in a conference room, correct?

2 A. Uh-huh.

3 Q. You had two lawyers there, correct?

4 A. Yes.

5 Q. Mr. Fisher was there and an in-house lawyer from
6 Tyson, correct?

7 A. (Indicating.)

8 Q. All right. And you remember, at the beginning of it,
9 you were asked to tell the truth, the whole truth, and
10 nothing but the truth, correct?

11 A. Correct.

12 Q. And you tried to do that, correct?

13 A. Yes, to the best of my knowledge.

14 Q. And in your deposition, I asked you (reading), "Why
15 did Mr. Gerber take it back?"

16 Your answer was, "Because the influx" -- I'm
17 reading from page 49, by the way -- "because of influx in
18 volumes. We cannot move the product and we were tending to
19 get flooded with inventory."

20 Question: "There were problems with the prior
21 deal between Zia and Tyson, in that Tyson was not taking the
22 cattle on time; that's why Mr. Gerber took it back,
23 correct?"

24 And your answer was, "Correct."

25 Do you remember that testimony?

1 A. Vaguely, but I guess so.

2 Q. And you were telling the truth at the time, correct?

3 A. Yes, sir.

4 Q. And that was over a year ago, much closer to the time
5 of this transaction?

6 A. Evidently.

7 Q. Do you have any plans to leave Tyson at the conclusion
8 of this lawsuit?

9 A. No, sir. Not since the stock market has taken a hit.

10 Q. What does that mean?

11 A. Means my 401K got beat up pretty good.

12 Q. All right. So Tyson's history with Zia. So you
13 understand that Zia and Narciso worked with Tyson for
14 approximately 20 years, correct?

15 A. That's...

16 Q. Do you know -- you know who Brad Brandenburg is?

17 A. You bet.

18 Q. How do you know him?

19 A. He was my mentor. He was my boss in 2013, when I got
20 into procurement.

21 Q. And are you aware that he worked with Zia?

22 A. By 2015, I was.

23 Q. Okay. Brad Brandenburg ever tell you about problems
24 with Zia?

25 A. Not really.

1 Q. Okay. In fact, Brad and Narciso became close friends
2 over the years, correct?

3 A. Yes, sir.

4 Q. And the same with Bruce Bass. Do you know Bruce Bass?

5 A. Yes, I did.

6 Q. And how do you know him?

7 A. He was the vice president of cattle procurement when I
8 was in the Dakota City plant.

9 Q. And did you talk to him about his relationship over
10 the last two decades with Zia?

11 A. He just told me him and Narci were buddies.

12 Q. You first met Narciso Perez in 2011, correct?

13 A. Yes, sir.

14 Q. You reached out to him about lining up some land for
15 you to go elk hunting in New Mexico; am I correct so far?

16 A. No, sir. It was his brother.

17 Q. Oh, I'm sorry. You reached out to Narciso's brother?

18 A. I did not reach out. Brad reached out. His brother
19 lined it up.

20 Q. Okay. You were going on this trip, correct?

21 A. Yes, sir.

22 Q. Very well. Have you ever been to Zia's offices in New
23 Mexico?

24 A. No, sir.

25 Q. Have you ever met Sean Perez?

1 A. Yes, sir.

2 Q. And where have you met Sean?

3 A. When I picked him up in Montana.

4 Q. Whereabouts in Montana?

5 A. Billings.

6 Q. What were you and Sean doing in Montana?

7 A. It was actually Sean, Narci, myself, and Jay Holmes
8 talking to cattle feeders --

9 Q. When was that --

10 A. -- ranchers --

11 Q. Oh --

12 A. -- excuse me.

13 Q. -- sorry to interrupt.

14 When was that, sir?

15 A. 2016, I think.

16 Q. Have you ever had any issues where -- that you were
17 aware of anyone at Tyson felt that Zia was trying to be paid
18 an amount to which they were not entitled?

19 A. Not to my knowledge.

20 Q. So you understand this lawsuit involves natural
21 cattle, correct?

22 A. Yes, sir.

23 Q. Okay. And just so we're all on the same page, what is
24 "conventional cattle"? What are "conventional cattle"?

25 A. "Conventional cattle" are animals that come through

1 the system, may have medicated feed, may have implants, are
2 allowed to be fed beta agonists, and are traded weekly on
3 the open market.

4 Q. The Nebraska weighted average that you talked about,
5 that's an average calculating the costs of conventional
6 cattle, correct?

7 A. That's correct.

8 Q. Not natural cattle, correct?

9 A. No.

10 (Reporter interruption for clarification.)

11 THE WITNESS: That was a "no."

12 Q. Correct, it's not --

13 A. Yes, sir.

14 Q. -- natural -- I just want to make sure we're on the
15 same page. Thank you.

16 When did you first become involved, in any
17 capacity, with natural cattle of any kind?

18 A. 2015.

19 Q. All right. Can you describe your job responsibilities
20 for us in 2015.

21 A. I was managing all the scale houses, their manager. I
22 was responsible for yields in the plants. I was also
23 responsible for getting out and meeting the finish feeders.

24 Q. The scale house?

25 A. Yes.

1 Q. What's a "scale house"?

2 A. A "scale house" is where we bring the cattle to unload
3 at the plant. They have a log of delivery times for each
4 truck, what producer, how many head. They line them up on a
5 sheet for the next day's harvest or that day's harvest, and
6 that's how they keep track of the cattle.

7 Q. All right. So in 2015, when you first started working
8 with the natural cattle, what percentage of your time was
9 spent out on ranches, looking at live cattle?

10 A. Probably 20.

11 Q. So --

12 A. Excuse me. Not ranches. Feedyards.

13 Q. Feedyards. All right. Did you ever go look at the
14 cattle on ranches or pastureland.

15 A. Sure.

16 Q. All right. In 2015?

17 A. Yes, sir.

18 Q. What percentage of your time was that?

19 A. Maybe five.

20 Q. All right. What is a "GAP cattle"? What is "GAP
21 cattle"? What are "GAP cattle"?

22 A. Global Animal Partnership for Whole Foods.

23 Q. And just for Whole Foods, correct?

24 A. Yes, sir.

25 Q. All right. So you can't get GAP -- you're not selling

1 GAP to Albertson's or Sprouts, just Whole Foods, right?

2 A. That's totally not correct. We may downgrade cattle
3 into -- since they're all 100 percent verified, they cover
4 every base that we sell.

5 Q. Okay. You're not selling them as GAP, though,
6 correct?

7 A. No.

8 Q. All right. What makes a GAP animal a GAP animal
9 compared to a conventional animal?

10 A. Well, you would go through an audit process that
11 starts at the ranch. You have to meet their standards.
12 It's on animal welfare. It's on environmental, it's on
13 animal husbandry, predator control. There's a long list of
14 audit questions.

15 Q. Okay. What is "NHTC"?

16 A. "Non-Hormone Treated Cattle."

17 Q. So all GAP cattle are NHTC, but all NHTC cattle are
18 not GAP cattle, correct?

19 A. That's correct.

20 Q. All right. And NHTC, is that mostly a European issue?

21 A. It is. It is. If the GAP cattle get treated, or
22 verified natural get treated with an antibiotic, they drop
23 down into NHTC. We get all three certifications to retain
24 some value of the animal for the supplier.

25 Q. Thank you. In the beginning of 2019, Tyson had

1 approximately -- that year, Tyson took approximately
2 6.5 million head of cattle, correct?

3 A. I believe.

4 Q. What percentage of that cattle was part of any natural
5 program, whether it be GAP or NHTC or otherwise?

6 A. From a percentage basis, I'd say probably around
7 three.

8 Q. So, in your deposition, I believe you told me 1.5 to
9 2. So has it changed or just --

10 A. No, it's just a wild guess. But one and a half to two
11 is fine.

12 Q. Still just a very small part --

13 A. Very small part --

14 Q. -- correct?

15 A. -- yes.

16 Q. All right. Is that all you deal with, is the natural
17 cattle, or did you also deal with conventional in 2019?

18 A. No, primarily just natural, NHTC.

19 Q. And, as a general rule, though, you would agree the
20 reason that Tyson is involved in the natural cattle program
21 is because you can sell it to Whole Foods and others for a
22 higher price, correct?

23 A. It's generally a higher-priced calf at the beginning.
24 And so that cost just keeps building as you go through the
25 process.

1 Q. So, in preparation for your testimony in this case at
2 least a year ago, you went through and searched for all your
3 e-mails, correct?

4 A. I did.

5 Q. And you searched for all your phone records, correct?

6 A. I did.

7 Q. And all your text messages, correct?

8 A. I did.

9 Q. And all your notes, correct?

10 A. Correct.

11 Q. So if there was a note or a phone call or an e-mail or
12 a text, you produced it in this case, correct?

13 A. To the best of my knowledge.

14 Q. You didn't destroy any or leave any out, correct?

15 A. Not that I'm aware of.

16 Q. Everything relating to Zia, correct?

17 A. Everything relating.

18 Q. Do you remember going with Narciso to see cattle on
19 January 14th of 2019 in Happy, Texas?

20 A. Most definitely.

21 Q. All right. I don't see any notes, in the notes you
22 produced, of your visit that day. Is that -- does that
23 square with your recollection?

24 A. I am [sic].

25 Q. Okay. Did you take notes while you were there?

1 A. Just talking and looking at calves.

2 Q. You had a notebook with you, didn't you?

3 A. I probably had my backpack with me.

4 Q. Did you not have some sort of a day-timer where you
5 took notes?

6 A. No. It might have been my black CAB binder.

7 Q. And you took notes in that binder, correct?

8 A. If I did not produce them, I did not take notes that
9 day.

10 Q. The transaction with Zia that Mr. Perez talked about
11 that resulted in your demotion, he told you they had lost
12 millions of dollars in that transaction, correct?

13 A. I don't remember.

14 Q. He testified that he told you they lost about
15 \$4 million. You just can't remember, either way?

16 A. I don't remember any cattle.

17 Q. All right. It is accurate that, in that transaction,
18 the feedlot in question was Beef City, correct?

19 A. To the best of my knowledge.

20 Q. Right. And do you agree that you -- that Mr. Perez
21 and Zia put those cattle in the feedlot for what was
22 projected to be four months, but you left them there for a
23 year?

24 A. I don't have any recollection of that.

25 Q. Either way?

1 A. Either way.

2 Q. You did get demoted as a result of that transaction,
3 correct?

4 A. I had the natural program taken away from me, yes.

5 Q. As a result of that transaction.

6 A. Might have been that. Might have been too many.

7 Q. Do you recall anything about the transaction with Zia
8 where you left the cattle longer, and Zia lost millions of
9 dollars?

10 A. I don't -- I don't remember. I don't remember leaving
11 any cattle for an additional 12 months. Because that's not
12 what we do.

13 Q. So I just want to be clear, you have no recollection
14 of it or you're confident you didn't leave them there for
15 12 months, which --

16 A. I'm telling you -- excuse me. I didn't mean to
17 interrupt you. I'm telling you that I do not remember the
18 cattle sticking around for an additional time frame that you
19 mentioned.

20 Q. In late 2018, you reached out to Narciso Perez to help
21 you fill a need for natural cattle for Whole Foods, correct?

22 A. Yes, sir.

23 Q. All right. You reached out to him. He didn't reach
24 out to you to sell it to you, correct?

25 A. That's correct.

1 Q. All right. And so we heard earlier in opening
2 statement by Mr. Fisher that these cattle were already
3 committed to Tyson before the trip to Happy, Texas, in
4 January of 2019, correct?

5 A. That is the best of my knowledge.

6 Q. Where do I go to find anything that shows that all
7 these cattle were committed to Tyson?

8 A. We would have a record of that. Verna Bennett, who
9 does the scheduling for the cattle...

10 Q. Are you going to testify about it today? This week?

11 A. Is she?

12 Q. Are you. Have you seen this record?

13 A. I actually have seen that record.

14 Q. Okay. Now, have you seen any record where Zia says,
15 "We agree these are all your cattle"?

16 A. No. The only thing I've seen is the head counts by
17 month or the slots available.

18 Q. An internal document between you and Ms. Bennett?

19 A. Well, we just wouldn't make up the numbers.

20 Q. John Gerber, you told us earlier --

21 A. Correct.

22 Q. -- I think had some phone calls in the spring of 2018,
23 but we don't know anything about it because no one is going
24 to testify about it, correct?

25 A. Correct.

1 Q. During that phone call, is that where Zia agreed that
2 all of this cattle, 8,000 head, were committed to Tyson?

3 A. I wasn't in on the phone call.

4 Q. During -- in that phone call or any document that
5 Tyson -- that Zia is on, is there anywhere where Zia says,
6 "These are your cattle; no matter what the price, no matter
7 when you take them, these are yours"?

8 A. Not to my knowledge.

9 Q. And we don't have any documents anywhere in the
10 universe to support this contention that somehow you had an
11 agreement with Zia that all those cattle were committed to
12 you in 2018, correct?

13 A. Correct.

14 Q. So you wouldn't have been calling him at the end of
15 2018 saying "I need help with Whole Foods," if you already
16 had all the cattle committed, correct?

17 A. My concern was cattle in the finish yards.

18 Q. We're going to scroll through your texts and such when
19 you reach out to Mr. Perez at the end of the year in early
20 2019.

21 A. No problem.

22 Q. And you've been here, looking at them, correct?

23 A. Correct.

24 Q. And I went through them at your deposition?

25 Have you seen anything since you've been here

1 this week where you tell -- remind Mr. Perez, "These are
2 already our cattle"?

3 A. No, sir.

4 Q. All right. You told Mr. Perez at the end of 2018 and
5 early 2019 that you could not do the Whole Foods transaction
6 unless you had cattle from Zia, correct?

7 A. Correct.

8 Q. And Mr. Perez, during those conversations, told you
9 that Zia was very dissatisfied with how much money they had
10 lost in the last transaction and they wanted to talk about a
11 new way of doing it, correct?

12 A. To the best of my knowledge, yes.

13 Q. And he told you, "We'll prepare a proposal for you,"
14 correct?

15 A. To the best of my knowledge.

16 Q. Thank you. And he did send a proposal, correct?

17 A. He sent a proposal.

18 Q. And he gave you a copy of it when you were in his
19 truck in Happy, Texas, correct?

20 A. At that time, yes.

21 Q. And it was not exactly the same, there was a finer
22 point on the board in front of us, but he gave you an almost
23 final version, correct?

24 A. What he gave me is what they had sent monthly in the
25 past two years or whatever. An inventory.

1 Q. He gave you a version in January, in Texas, that had
2 all these costs on this, correct?

3 A. I believe he did.

4 Q. And down here at the bottom, it said total costs -- I
5 don't know what it said in the prior version, but a total
6 cost of 16 million, approximately, correct?

7 A. It might have been.

8 Q. When he gave you this in February and e-mailed it to
9 you and said, "Take a look at this," you remember getting
10 that, correct?

11 A. I do.

12 Q. And you did take a look at it, correct?

13 A. I did.

14 Q. You e-mailed back, "Looks good, get them in the finish
15 yard ASAP," correct?

16 A. That's correct.

17 Q. All right. Now, when you read this, and it says
18 "total costs, 16.3 million," was there any question in your
19 mind as to who Zia was expecting to pay these costs?

20 A. Yes.

21 Q. Did you think, when Zia sent this to you, they meant
22 Zia is paying these cost?

23 A. I had no clue because, like I said earlier, I strictly
24 looked at the inventory. The numbers were irrelevant to us.

25 Q. You know their accounting staff spent weeks preparing

1 all these numbers, correct?

2 A. I've heard that today.

3 Q. He told you that in Texas, correct?

4 A. Not the multiple people in multiple weeks, no.

5 Q. They have a small business, correct?

6 A. Yeah.

7 Q. Smaller now than it used to be, right?

8 A. That's what I've heard.

9 Q. Okay. There are 17 columns and about 25 rows?

10 A. Uh-huh.

11 Q. The last nine columns are all about cost, correct?

12 A. That's what I've been described [sic].

13 Q. And when you got the proposal on February 4th of
14 2019, and you responded "looks good," you read all these
15 costs, correct?

16 A. No, sir.

17 Q. How do you do that? How do you just look -- please, I
18 don't want to make you act this out, but show me how you
19 looked at the document and only looked at the columns on the
20 left and nothing on the right.

21 A. Because I base everything on an inventory; where
22 they're at in the feedyards, what the projected outdates
23 are.

24 Q. Narciso told you in Texas they needed to do something
25 where you had a cost plus agreement to help them pay the

1 costs of raising these cattle, correct?

2 A. He might have.

3 Q. All right. You don't recall, either way?

4 A. No, sir.

5 Q. You spent the day driving around with that
6 (indicating) on your lap, correct?

7 A. Yeah.

8 Q. You brought it in to lunch, correct?

9 A. I might have.

10 Q. All right. You took notes at lunch when you're
11 talking to Narciso about that chart, correct?

12 A. I believe I ate my lunch. I did not go through notes.
13 To the best of my knowledge.

14 Q. Did you go to the best chicken fried steak place in
15 the Texas Panhandle?

16 A. In Canyon, yeah. It was really good; however, the
17 main goal was to get out, look at the calves, look at the
18 weight of the calves, and figure out -- on a typical
19 natural, they take six months to get to maturity, top grade,
20 and quality.

21 Q. So he tells you, before you go to Happy, Texas, "We
22 have to do things differently, and I'm going to give you a
23 proposal." And then he gives you one when you get into the
24 pickup in Happy, correct?

25 A. Yes.

1 Q. All right. So he's telling you, "We're doing
2 something different; I have a proposal and here it is." And
3 your testimony is in Happy, Texas, you ignore the nine
4 columns on the right?

5 A. That is correct.

6 Q. And your testimony is, when you responded, "Looks
7 good," you meant "the inventory numbers look good; nothing
8 else looks good"?

9 A. Correct.

10 Q. Did you ever say that until you responded the day
11 after you got the first bill in late May that you -- that
12 nothing looked good except the one column out of 17?

13 A. Excuse me. Can you repeat that question?

14 Q. Did you ever, between February 4th when you said
15 "looks good," when this cost plus agreement labeled a "cost
16 plus agreement" was attached to the e-mail -- did you ever,
17 from that day, until May 25th, the day after you get the
18 first bill and the day after the cattle are ready to be
19 sacrificed, did you ever tell anyone at Zia when you said
20 "looks good," you meant Column 5 and nothing else looks
21 good?

22 A. No. What I meant when I said "looks good" is getting
23 the cattle in the feedyards. Because, if they have an
24 outdate of June and it is January, those cattle are not
25 going to be finished properly.

1 Q. So you could see why, when someone sends you a
2 proposal and you say "looks good," they might logically
3 assume you mean the proposal looks good, correct?

4 A. He could have assumed that, yes.

5 Q. And it would be logical for someone to assume that,
6 correct?

7 A. Possibly.

8 Q. All right. And you responded to this proposal, as
9 associate director at Tyson Foods in charge of the natural
10 program, correct?

11 A. Correct.

12 Q. When you saw this chart in Happy, in the pickup, how
13 long were you in the pickup with him?

14 A. I think we were there for, like, three hours driving
15 around the wheat pasture.

16 Q. It was the first thing he gave you when you got in,
17 correct?

18 A. I don't recall.

19 Q. It was the only thing he gave you when you got in the
20 truck, correct?

21 A. It was.

22 Q. And you took it back with you, correct?

23 A. I believe.

24 Q. Do you still have it in your files?

25 A. Probably not.

1 Q. Why not?

2 A. It was irrelevant to me. It was an inventory.

3 Q. Their accounting department spent weeks working on
4 that, and their work was irrelevant to you, correct?

5 A. It was.

6 Q. Because you're the director of cattle for Tyson;
7 you're going to pay the amount you want to pay when you take
8 the cattle, regardless of whatever promises or proposals
9 came before that, correct?

10 A. When I pay for cattle, it's an agreed-upon premium per
11 head.

12 Q. Where is that agreement, I asked you that earlier.
13 There's not one?

14 A. I understand.

15 Q. All right. So you can see how we have one proposal,
16 you say "looks good," and that's the only agreement anywhere
17 on the planet, correct?

18 A. Could be.

19 Q. So you see how it's logical for the people who
20 received your e-mail saying "looks good" to assume that's
21 the contract because it's the only one that exists on the
22 planet, correct?

23 A. It's the only cost plus that he sent.

24 Q. It's the only proposal that he sent, correct?

25 A. Yes.

1 Q. And you say "looks good" to the only proposal, and
2 there was none other, correct?

3 A. The "looks good" was referring to inventory.

4 Q. How were they supposed to know that? You didn't tell
5 anyone that until you got the cattle in late May, correct?

6 A. Correct.

7 Q. Why didn't you say -- why don't you say in Happy,
8 Texas, "Column 5 looks good; the rest of it doesn't look
9 good"?

10 A. Because I'm strictly looking at inventory.

11 Q. Because you know if you say, "This proposal doesn't
12 look good," you're not getting any of that cattle, correct?

13 A. If it would have been put out to me that I was paying
14 for everything, I would definitely have said "no" right
15 there and then.

16 Q. You knew if you told Narciso, "I don't agree with this
17 proposal," you would not get any of that cattle and you
18 couldn't do your deal with Whole Foods, correct?

19 A. Oh, not necessarily. We had plenty of cattle that
20 year. It would have helped. It would have helped by month,
21 yes.

22 Q. So, five minutes ago, you told me you told Narciso,
23 "We need your cattle to do the deal" --

24 A. Sure, sure.

25 Q. Let me just go back and make sure I got the answer.

1 You knew, if you told him "I do not agree with that
2 proposal," you're not getting any of that cattle, correct?

3 A. Correct.

4 Q. At the end of the day in Happy, after you've had your
5 lunch, you've driven around for a few hours, Narciso took
6 you back to your truck, correct?

7 A. Yes, sir.

8 Q. All right. And Narciso reaches out his hand and says,
9 "Do we have a deal," correct?

10 A. I don't recall. We shake hands every time, though.

11 Q. He says he reached out his hand and said, "Do we have
12 a deal?" and you said, "We have a deal." Do you recall
13 that?

14 A. I do not recall saying that.

15 Q. Don't recall, either way?

16 A. No, sir.

17 Q. You discussed with him in Happy that they could have
18 implanted those cattle and sold them as natural -- sold them
19 as conventional, correct?

20 A. I don't remember.

21 Q. But you knew that already. They could have taken
22 those cattle that you said "looks good, get it done ASAP,"
23 they could have implanted them, raised them as conventional,
24 and sold them to any of the Big Four, correct?

25 A. If that's what they chose to do, yeah.

1 Q. And you knew that when they committed those cattle to
2 you, as the only company of the Big Four packers, that there
3 would be no place else to sell those cattle as GAP when they
4 came ready for sacrifice in May or June, correct?

5 A. If you're talking strictly the Big Four, correct. If
6 you're talking other mid-size packers, then you have
7 Creekstone and you have Meyer Angus.

8 Q. You told me you heard rumors about those two, correct?

9 A. Correct.

10 Q. They're obviously not much competition for you, or
11 you'd have a lot more than rumors, correct?

12 A. Oh, they're good competition.

13 Q. In 2019?

14 A. Yes, sir.

15 Q. Ms. Gallagher, please put Exhibit 10 on.

16 Mr. Scherer, please look at Exhibit 10 and tell
17 me if you recognize it.

18 A. Yeah, I do.

19 Q. Okay. And this is a couple days after you met with
20 Narciso in Happy, Texas, correct?

21 A. Correct.

22 Q. And you thank him for taking the time Monday to look
23 at those calves (reading) "...and let's get the feedlot
24 inventory up to date and get these cattle in for May and
25 June and we'll go forward, thanks, again." Correct? You

1 sent that to him?

2 A. Yes, sir.

3 Q. Okay. Ms. Gallagher, please put Exhibit 12 up.

4 And, Mr. Scherer, you sent this a week later
5 (reading): "Did start [sic] moving calves off wheat? Need
6 them in a feedlot," correct?

7 A. That's correct.

8 Q. But Narciso, you had phone calls with him during that
9 week, too, correct?

10 A. Would you repeat the question?

11 Q. Yes. During the week between the e-mail where you
12 said -- thanking him for taking you to look at the cows in
13 Happy and this e-mail, seven days later, nine days after the
14 Happy visit, you had phone calls with Narciso, correct?

15 A. He might have called, yes.

16 Q. You might have called him? You called him insistently
17 during the three weeks from when you got that in Happy,
18 Texas, and February 4th, correct?

19 A. Possibly.

20 Q. You called him repeatedly wanting to make certain you
21 could lock in the natural cattle in the three weeks between
22 Happy, Texas, and February 4th; isn't that correct?

23 A. To the feedyard, yes, sir.

24 Q. Ms. Gallagher, Exhibit 13, please.

25 And that is later the same day (reading): "Let

1 me know when they start delivering."

2 Do you remember that one?

3 A. I do.

4 Q. Why did you have to e-mail and text him twice in the
5 same day?

6 A. I just wanted to make sure that he read the text.

7 Q. And then, later that same day -- Ms. Gallagher,
8 Exhibit 14, please -- you say (reading), "I would agree,
9 just need them in the yard to put them on the books,"
10 correct?

11 A. That is correct. To figure out an outdate.

12 Q. You would agree to what?

13 A. I'd like to know what the other text was.

14 Q. I don't know if we have the other text.

15 A. I don't, either.

16 Q. All right. Did you have a phone call with Narciso
17 between these texts?

18 A. I don't recall.

19 Q. Is there any other proposal on the table that you
20 would have been discussing with Narciso that you might agree
21 to, other than this cost plus proposal on January 23 when
22 you wrote this text?

23 A. Nebraska weighted average with a premium per head.

24 Q. Who made that proposal in January?

25 A. That's just the way we do business.

1 Q. Nobody -- nobody in January made any proposal to do
2 anything according to the Nebraska weighted average for
3 these cows; isn't that correct?

4 A. I don't recall.

5 Q. No one made a proposal to do anything according to the
6 Nebraska weighted average for these cattle in January; isn't
7 that correct?

8 A. To the best of my knowledge.

9 Q. Thank you.

10 Let's look at Exhibit 14, please.

11 I'm sorry, that was 14. All right. Let's look
12 at Exhibit 16, please.

13 And this is five days later (reading): "Any
14 movement on the cattle heading north?"

15 A. Correct.

16 Q. You would agree you have a certain urgency in getting
17 these cattle moving, so you can contemplate the Whole Foods
18 transaction?

19 A. No. What concerns me is the cattle being finished
20 with a projected outdate.

21 Q. And the cattle in question here, though, you needed to
22 be finished by a certain date to consummate the transaction
23 with Whole Foods, correct?

24 A. They would help.

25 Q. How much of a markup did you receive from Whole Foods

1 for the cattle you purchased from Zia?

2 A. I don't deal with the boxed beef pricing.

3 Q. This lawsuit has been going for three years, correct?

4 A. Correct.

5 Q. I asked you this same question a year ago in your
6 deposition, correct?

7 A. I believe you did.

8 Q. You've made no attempt to find out the answer to the
9 question you knew I was going to ask you today, which is
10 exactly what I asked in your deposition -- how much of a
11 markup from Whole Foods -- correct?

12 A. Correct, I don't know.

13 Q. It was profitable, correct?

14 A. It was a good year.

15 Q. Ms. Gallagher, please put up Exhibit 17.

16 So, six days after that last text, Narciso sends
17 you this e-mail, correct?

18 A. Yeah.

19 Q. And had you spoken with Narciso in those six days?

20 A. I don't recall.

21 Q. And we can all see, first of all, he says (reading),
22 "Look this over," correct?

23 A. Yes.

24 Q. Obviously, there's an attachment to look over,
25 correct?

1 A. Correct.

2 Q. And the attachment is the cost plus model, correct?

3 A. I looked at the top where it says (reading), "show
4 list." But it does state that right there, yes.

5 Q. You opened the attachment, correct?

6 A. Yes, but I always look at the heading before I open an
7 e-mail. The subject matter.

8 Q. You opened the attachment entitled "cost plus model,"
9 correct?

10 A. Correct.

11 Q. And you see the 17 columns, correct?

12 A. Correct.

13 Q. Nine of those columns relate to price, correct?

14 A. That's what I've been led to understand.

15 Q. "Been led to understand"? You've had this document
16 for three years, correct? You've read these costs at some
17 point, correct?

18 A. I don't pay attention to them.

19 Q. When you opened it, this attachment --

20 A. Correct.

21 Q. -- on February 4th, you must have seen nine headings
22 about costs, correct?

23 A. Oh, I did.

24 Q. Okay. And are you saying, after all the work Zia put
25 in, you didn't read them, at all?

1 A. I didn't pay any attention to them.

2 Q. At the bottom, there's a number, total costs, of
3 16.3 million, correct?

4 A. Correct.

5 Q. Narciso went over that box with you, correct, in your
6 Happy, Texas, visit?

7 A. I don't recall.

8 Q. All right. And, again, I don't want to beat this to
9 death, your only response (reading), "This looks good, get
10 them in a finish yard ASAP, please," correct?

11 A. From an inventory standpoint, yes.

12 Q. That's not what it says.

13 A. No, I know. It says --

14 Q. I know you want to add this "inventory" part, but you
15 didn't say anything about "inventory" here, correct?

16 A. Correct.

17 Q. You never said anything about "this proposal looks
18 good only from an inventory standpoint" until you started
19 getting the bills and the cattle in late May, correct?

20 A. Yes.

21 Q. When you're looking at the inventory -- and
22 Ms. Gallagher, can you please put Exhibit 18 on the board.

23 Mr. Scherer, you looked at the first column, the
24 ranch column, correct?

25 A. Correct.

1 Q. And you were able to read that pretty clearly,
2 correct?

3 A. Yeah, Stormy Burch.

4 Q. You recognized a lot of these, correct?

5 A. Yes, sir.

6 Q. In fact, you later went and visited some, correct?

7 A. Oh, I probably have, yes.

8 Q. And in every one of these ranches, every one of these
9 locations, after you sent the "looks good" e-mail, either
10 you, personally, or one of your colleagues went and looked
11 at the cattle, correct?

12 A. Actually, the very next day, I had an invite from a
13 mutual friend to sit down and talk with them.

14 Q. What does that mean?

15 A. This gentleman had been bugging me to come to
16 Amarillo, Texas, to meet with a friend of his.

17 Q. So what does that friend have to do with these
18 ranches?

19 A. Well, it was the owners of Cuervo Creek.

20 Q. Cuervo Creek is near Happy, Texas, correct?

21 A. No, it is not.

22 Q. Where is Cuervo Creek?

23 A. North and west of Tucumcari, New Mexico.

24 Q. So my question was, for every one of these ranches,
25 the cattle described on this chart, after February 4th,

1 either you, personally, or someone under your direction went
2 and looked at every single location, correct?

3 A. We have 42 buyers in all the United States. So it's
4 their obligation, if they're in a feedyard, to look at the
5 cattle.

6 Q. You told them to go look at every one of those,
7 correct?

8 A. Yes, I did.

9 Q. And when you got the proposal, either in January or in
10 February 4th, it's got the sex -- steer, heifer --
11 correct?

12 A. Correct.

13 Q. You read that, correct?

14 A. Oh, yeah.

15 Q. And the estimated remaining head count; you read
16 those, correct?

17 A. Correct.

18 Q. Now, Narciso said that three -- they assumed a
19 3 percent death loss rate. Do you make that same assumption
20 when you're procuring cattle?

21 A. I use 10 percent.

22 Q. 10 percent?

23 A. Yes, sir.

24 Q. All right. Why do you use 10?

25 A. Simply because natural cattle do not get all the

1 antibiotics or the medicated feed as a calf.

2 Q. Okay. And the next three columns, estimated weight in
3 lean months. Now, the lean months -- April, May, and
4 June -- those are the months where you need more cattle,
5 correct?

6 A. That is considered grilling season.

7 Q. Okay. Summer barbecues are coming --

8 A. Yep.

9 Q. -- 4th of July and all that, correct?

10 A. Generally get past Easter and away it goes.

11 Q. So you read the part about the estimated weight in
12 each of those months, correct?

13 A. Yes.

14 Q. And you understood what it said, correct?

15 A. What was the question?

16 Q. You understood what was conveyed there, correct?

17 A. I did.

18 Q. And the next column we have in blue (reading), "Total
19 cost, April 15, May 15, June 15," you saw this on
20 February 4th, correct?

21 A. Yes.

22 Q. And you could read this clearly, that the total costs
23 for the first one would be \$198,000, correct?

24 A. Correct.

25 Q. And then you read total cost per head, same thing,

1 April, May, June, you saw that on February 4th, correct?

2 A. Yes, sir.

3 Q. And you understood what that meant, correct?

4 A. Yeah.

5 Q. And then you saw, in the green (reading), "Total cost
6 per pound April, May, June," and you could read that
7 clearly, correct?

8 A. Correct.

9 Q. You've been buying cattle as director of procurement
10 for several years. You don't need someone to interpret the
11 weight or price per pound for you, right?

12 A. Correct.

13 Q. There's nothing on this chart that you couldn't
14 understand when you read it in February, correct?

15 A. If I know who was paying the costs.

16 Q. I know you want to say you're not paying it, but other
17 than that?

18 A. Sure.

19 Q. All right. You understood all -- you didn't need a
20 bunch of backup to understand what "price per pound" is,
21 correct?

22 A. I would have liked to have known what the cost of the
23 ration was, other integral costs, yardage, stuff like that.

24 Q. So did you ask for that information?

25 A. No.

1 Q. All right. Tell me the first one. So, tell me, you
2 would have liked to have known what, now? Tell me what the
3 two are now.

4 A. Excuse me?

5 Q. So you said you would have liked to have known a
6 couple things. And you said it kind of quickly, and I
7 didn't quite know what you said. Can you tell me what those
8 are?

9 A. Corn basis. Roughage cost. Total ration cost.
10 Yardage.

11 Q. What is "corn basis"? What does that mean?

12 A. That's corn delivered to your area.

13 Q. Into a feedlot?

14 A. To a feedyard.

15 Q. Why did you need to know that?

16 A. Because I always like to go to the best finish yards.

17 Q. Okay. Now, your testimony is that you didn't intend
18 to pay for the cost of raising the cattle, correct?

19 A. That's correct.

20 Q. So the -- you would have liked to have known the corn
21 basis, but, according to your testimony, you weren't going
22 to pay it, either way, correct?

23 A. That is correct.

24 Q. All right. How about "roughage cost"? What does that
25 mean?

1 A. Hay. Corn stalks --

2 Q. Okay.

3 A. -- distillers, whatever you find.

4 Q. Same thing, to feed the animals, correct?

5 A. Correct.

6 Q. And under your interpretation of the contract, you
7 weren't supposed to pay for raising them, anyway, so you
8 didn't need to know that either, correct?

9 A. Nope.

10 Q. All right. "Total ration," what does that mean?

11 A. Total ration costs?

12 Q. Total ration costs, yes.

13 A. All the inputs in for a pound of gain.

14 Q. And, again, under your interpretation, you weren't
15 going to pay those things, either way, correct?

16 A. Yeah.

17 Q. And what does "yardage" mean?

18 A. What the feedyard charges to a customer for bringing
19 calves in to finish them.

20 Q. So when you received this on February 4th, you
21 understood what all these columns meant, correct?

22 A. For the most part, yes, sir.

23 Q. All right. And you looked down here and you could
24 understand what those costs are, too, correct?

25 A. Just the totals, yeah.

1 Q. All right. Anything ambiguous about any of these to
2 someone like you that's been in the cattle industry for
3 30 years?

4 A. No.

5 Q. All right. And when you said, "Looks good, get them
6 in the finish yard ASAP, please," you never had any
7 intention of paying Zia any of these costs in the final nine
8 columns of the proposal you responded to on February 4th?

9 A. That is correct.

10 Q. And you never told Zia until the end of May that you
11 personally never had any intention of paying any of the
12 costs in the final nine columns of Exhibit 18, correct?

13 A. I never agreed to the contract alleged.

14 Q. You never told Zia you never had any intention of
15 paying any of the costs of raising these cattle until you
16 started getting the cattle at the end of May, correct?

17 A. Yes, that's correct.

18 Q. Well, let me go back over here to the total cost
19 projected for these cattle at the time you received this to
20 raise the cattle, pay the cost associated, was 16,300,000,
21 correct?

22 A. That's what it says, yes.

23 Q. You saw this document February 4th, correct?

24 A. Yes, sir.

25 Q. All right. Do you know what the total costs were of

1 raising the cattle when it was all said and done?

2 A. No, sir.

3 Q. Do you have any idea?

4 A. No, sir.

5 Q. Do you know how much you paid?

6 A. I'd have to go back and look.

7 Q. Where would you go look for that, as you're sitting on
8 the witness stand in a trial now?

9 A. Yeah, I can't right here.

10 Q. Pardon?

11 A. I can't from right here.

12 Q. You're surprised I might ask you in the middle of this
13 trial how much you paid for the cattle?

14 A. Not at all.

15 Q. So it...I asked you these same questions a year ago?

16 A. Correct.

17 Q. But you didn't think in that time it would be in your
18 interest to look up how much you got from Whole Foods or how
19 much you paid Zia for the cattle you sold to Whole Foods,
20 correct?

21 A. I might have, but I don't remember.

22 Q. And the reason you don't remember it now is because
23 it's not going to make Tyson look very good when the jury
24 finds out how much profit Tyson made on this transaction for
25 which it did not pay the costs associated in that proposal

1 you said looks good; is that correct?

2 A. I don't know.

3 Q. Pardon?

4 A. I don't know.

5 Q. We heard during Mr. Fisher's opening statement that
6 this proposal was missing ingredients, that it was uncertain
7 because it was missing some things that needed to be
8 included, correct?

9 A. Correct.

10 Q. Now, you remember, though, that I asked you this
11 question in your deposition: "What was missing for you to
12 understand how the transaction worked?" Do you remember
13 that?

14 A. Vaguely.

15 Q. You were not able to identify anything about this that
16 was uncertain to you, correct?

17 A. To the best of my knowledge, yes.

18 Q. If you wanted to know how much -- just humor me for a
19 moment. If Tyson is going to pay this, everything is there
20 to tell you how much money you would have to pay for these
21 cattle, 16.3 million, correct?

22 A. If everything was listed out, yes.

23 Q. Okay. Everything is listed out, correct?

24 A. By entity.

25 Q. Pardon?

1 A. By entity.

2 Q. What do you mean by that?

3 A. Again, yardage, feed costs, corn basis, roughage
4 costs.

5 Q. I asked you that in your deposition. I asked you to
6 tell me what was missing; you didn't name corn basis,
7 roughage cost, total ration costs, or yardage when I asked
8 you that exact question 14 months ago, correct?

9 A. That is correct.

10 Q. All right. And when you were there, represented by
11 two lawyers, you swore to tell the whole truth and nothing
12 but the truth?

13 A. Correct.

14 Q. And you didn't come up with corn basis, roughage cost,
15 ration cost, or yardage until you're here testifying in
16 front of the jury, correct?

17 A. To the best of my knowledge, yes.

18 Q. Thank you.

19 Which cattle did you personally visit that's set
20 forth in the Exhibit 18?

21 A. Can you scroll that down a little bit?

22 Q. Yes.

23 A. The High Choice cattle.

24 Q. That's the Cuervo Creek, correct?

25 A. That would include some Cuervo Creek, yes.

1 Q. When you visited that cattle, did you have any
2 complaints about how they looked?

3 A. No. I said they -- really good genetics. I've always
4 told Narci he's had genetics.

5 Q. All right. Ms. Gallagher, please put Exhibit 21.

6 So in Exhibit 21, you say you need Prewitt's --

7 THE COURT: Mr. Worden, I don't have that as
8 admitted.

9 MR. WORDEN: Oh, I'm sorry.

10 THE COURT: What's Tyson's position on admitting
11 Exhibit 21?

12 MR. FISHER: We're unopposed, Your Honor.

13 THE COURT: Okay. Exhibit 21 is admitted.

14 (Joint Exhibit 21 was admitted into evidence.)

15 MR. WORDEN: Thank you.

16 THE COURT: Go ahead.

17 Q. (BY MR. WORDEN): Who is Prewitt?

18 A. I believe he's a partner of Narci's.

19 Q. It's a feedlot in Montana, correct?

20 A. Sidney, I believe, yes.

21 Q. What did you say? Sidney?

22 A. Sidney, Montana.

23 Q. And what is KM?

24 A. Kendall Martin Feedyard.

25 Q. Where are they located?

1 A. Mid-central Kansas.

2 Q. And both of those are listed on the proposal right
3 here, correct?

4 A. Yes.

5 Q. And you obviously read it very carefully in order to
6 tell Narciso you needed some numbers, correct?

7 A. Yes.

8 Q. And did Narciso get you the numbers?

9 A. Yeah. I was more worried about where the Happy
10 Pasture cattle were going.

11 Q. Let's please put up Exhibit 133.

12 (Discussion off the record.)

13 Mr. Scherer, please tell me if you've seen this
14 e-mail before.

15 A. Yeah.

16 Q. And you received it on February 18, 2019, two weeks
17 after the "looks good" e-mail, correct?

18 A. Yes, sir.

19 Q. All right. And the title is (reading) "cost plus
20 model corrected," correct?

21 A. Yeah, the attachment.

22 Q. Okay. And then let's look at the attachment, please.

23 And this attachment was there, correct?

24 A. Yeah.

25 Q. So now you've received it for the third time, correct?

1 A. Yes, sir.

2 Q. And the title of the e-mail is (reading) "cost plus
3 update," correct?

4 A. I believe that's how the attachment was titled.

5 Q. So you saw another attachment entitled "cost plus
6 update," so you obviously immediately called Narciso and
7 said, "There's been a big misunderstanding, we never agreed
8 to a cost plus." You called him and told him that, correct?

9 A. No, sir.

10 Q. You texted him and told him that, correct?

11 A. No.

12 Q. You e-mailed him and told him, "There is a
13 misunderstanding, we did not agree to a cost plus," correct?

14 A. No.

15 Q. You didn't say what you said in the end of May, "I'm
16 not paying for the cost of your calves," when you received
17 yet another cost plus update, correct?

18 A. No.

19 Q. Please put Exhibit 134 up.

20 THE COURT: Counsel, I don't have this as
21 admitted, either.

22 What's Tyson's position on Exhibit 134?

23 MR. FISHER: Unopposed, Your Honor.

24 THE COURT: 134 is admitted.

25 (Joint Exhibit 134 was admitted into evidence.)

1 MR. WORDEN: Thank you.

2 Q. (BY MR. WORDEN): So this is a response to the
3 corrected cost plus. And you asked (reading),
4 "What's Valley View? Why aren't all these cattle in
5 the finish yard? I'm hearing a lot of stuff going
6 on. I need assurance these cattle will be ready and
7 available," correct?

8 A. Correct.

9 Q. Valley View, is that Rod Prewitt's ranch?

10 A. That's what I found out, yes.

11 Q. You already knew who Rod Prewitt was before this?

12 A. I did. We had met in Billings.

13 Q. He's got a big operation in Sidney, as you mentioned?

14 A. Correct.

15 Q. All right. So you clearly read the attachment on
16 February 18th, the cost plus update, because you responded
17 with a question about it, correct?

18 A. I read the inventory, yes, sir. And location.

19 Q. So how do you do that? I mean, I'm not trying to make
20 fun here. Do you shield your eyes from the other nine
21 columns? How do you not read two-thirds of a page?

22 A. Because I never had an agreement.

23 Q. But you didn't have an agreement for anything
24 regarding this cattle other than this one, correct?

25 A. I don't remember.

1 Q. Where is your e-mail saying, "Narci, we really need to
2 talk about how we're going to pay for this cattle because we
3 don't have anything in place"? You never did that, did you?

4 A. No, sir.

5 Q. Please put up Exhibit 135. And let's see the next
6 page, please. Let's go back to the first page.

7 Mr. Scherer, you received this e-mail on
8 March 4th, 2019, attaching an updated cost plus model,
9 correct?

10 A. Yes, sir.

11 Q. And you reviewed the attachment, correct?

12 A. Yes, sir.

13 Q. And you did not respond in any way to this suggesting
14 you did not agree to the cost plus model for payment,
15 correct?

16 A. To the best of my knowledge, correct.

17 Q. Please put up Exhibit 26.

18 THE COURT: That's not admitted.

19 What's Tyson's position on Exhibit 26?

20 MR. FISHER: We are -- no objection, Your Honor.

21 THE COURT: Exhibit 26 is admitted.

22 (Joint Exhibit 26 was admitted into evidence.)

23 MR. WORDEN: Thank you.

24 Q. (BY MR. WORDEN): So you send this e-mail --
25 Hold on. Let's get it up there.

1 Okay. Here we go. So this is later the same
2 day. You receive the cost plus update and you respond to
3 it...

4 And you respond to it saying you (reading),
5 "...needed inventories tomorrow morning for Beef City, KM,
6 High Choice, and Prewitt," correct?

7 A. That's what it says, yes.

8 Q. That's what you wrote, correct?

9 A. Yeah.

10 Q. So, obviously, you received the March 4th cost plus
11 update and you obviously reviewed it because you responded
12 to it, correct?

13 A. I did.

14 Q. Let's please put Exhibit 27 up, Ms. Gallagher.

15 THE COURT: That's not admitted.

16 What's Tyson's position on Exhibit 27?

17 MR. FISHER: No objection, Your Honor.

18 THE COURT: Objection -- Exhibit 27 admitted.

19 (Joint Exhibit 27 was admitted into evidence.)

20 MR. WORDEN: Thank you, Your Honor.

21 (Discussion off the record.)

22 Q. (BY MR. WORDEN): Now, this is a text from
23 Narciso to you a few days later, correct?

24 A. Yes.

25 Q. It says (reading), "Ty said you were happy with his

1 cattle." Do you understand who Ty is by reading this?

2 A. You bet I do.

3 Q. Who is Ty?

4 A. Ty Rumford, manager at High Choice at the time.

5 Q. So this is in March. Had you just visited the High
6 Choice ranch?

7 A. High Choice ranch or feedyard?

8 Q. Feedyard, I'm sorry.

9 A. Yeah, we drove through the feedyard on our way back
10 from New Mexico.

11 Q. But this is in March, this is March 14.

12 A. That is correct.

13 Q. This is about six weeks later, then, when you -- you
14 drove back from where?

15 A. I said "New Mexico."

16 Q. Okay. But were you in New Mexico looking at some of
17 these cattle?

18 A. We were meeting with a rancher.

19 Q. Was this rancher involved with this transaction?

20 A. I believe some of his cattle were in there.

21 Q. Who is that?

22 A. Cuervo Creek.

23 Q. So maybe I misunderstood. I thought you had visited
24 Cuervo Creek when you were down in Happy, Texas?

25 A. We met with them and another cattle feeder who was a

1 mutual friend of theirs.

2 Q. All right. Let's please put up Exhibit 28.

3 And you respond (reading), "Damn good-looking
4 cattle, even on a rainy, crappy day." That was after you
5 look at Cuervo Creek, correct?

6 A. That is correct. I drove in the rain all the way from
7 Amarillo, Texas.

8 Q. And this was part of the cattle in the cost plus
9 proposal, correct?

10 A. I believe they're listed in there, yes.

11 Q. All right. Please put Exhibit 146 up.

12 THE COURT: 146 hasn't been admitted.

13 What's Tyson's position on Exhibit 146?

14 MR. FISHER: No objection, Your Honor.

15 THE COURT: Exhibit 146 is admitted.

16 (Joint Exhibit 146 was admitted into evidence.)

17 Q. (BY MR. WORDEN): In April, were you still
18 trying to get Zia to add more cattle to this
19 transaction or event?

20 A. I don't remember.

21 Q. Do you remember, after you sent the "looks good"
22 e-mail on February 4th, you continued to call Narciso
23 saying you'd take more cattle if he could get it?

24 A. I don't remember.

25 Q. Just no recollection, either way?

1 A. I simply don't remember.

2 Q. Justin Nelson is on this e-mail. Do you see that,
3 sir?

4 A. Yes, sir.

5 Q. I didn't see him on the prior e-mails. Do you have a
6 recollection of why he was starting to be included now
7 or...an explanation for that?

8 A. Well, to the best of my knowledge, right up prior to
9 this date this e-mail was sent, I was in Italy for
10 two weeks, so that's maybe why he contacted Justin.

11 Q. Okay. That's a good explanation.

12 Please put Exhibit 29 up.

13 THE COURT: Exhibit 29 has not been admitted.

14 What's Tyson's position on Exhibit 29?

15 MR. FISHER: No objection.

16 THE COURT: Exhibit 29 is admitted.

17 (Joint Exhibit 29 was admitted into evidence.)

18 Q. (BY MR. WORDEN): Now, this is an e-mail from
19 Narciso to Justin Nelson, you, and Sean. Do you
20 remember getting this e-mail?

21 A. Yeah, I do.

22 Q. Okay. Was this when you might have still been in
23 Italy and Mr. Nelson was covering the desk or...

24 A. I would have been back by now.

25 Q. All right.

1 Mr. Perez says (reading), "I hope you are all
2 well. Cattle in question: The Myers Ranch cattle. I
3 showed these cattle to Bob in Happy, Texas, when they were
4 on wheat. I am sure he remembers these beautiful red cattle
5 that he and I discussed would fit November and December."

6 Do you see that?

7 A. I do.

8 Q. Do you remember this discussion about additional
9 cattle for November and December?

10 A. Just the numbers, in general, for the months.

11 Q. Because, Myers cattle, they're not included in
12 Exhibit 18, the chart over in the corner, correct?

13 A. I don't believe so.

14 Q. You were starting to talk about getting cattle from
15 Zia to do a different transaction later in the year; is that
16 accurate?

17 A. Yeah.

18 Q. All right. Please look at Exhibit 31.

19 THE COURT: Exhibit 31 has not been admitted.

20 What's Tyson's position on Exhibit 31?

21 MR. FISHER: No objection, Your Honor.

22 THE COURT: Exhibit 31 is admitted.

23 (Joint Exhibit 31 was admitted into evidence.)

24 MR. WORDEN: Thank you.

25 Q. (BY MR. WORDEN): Okay. Exhibit 31 is an

1 e-mail dated May 10, 2019. At the top, it's Mike to
2 Narciso; attached is the updated cost plus model.
3 And am I correct he then forwarded that to you?

4 A. Yes.

5 Q. All right. And it's attaching two cost plus models,
6 correct?

7 A. Yes.

8 Q. One that you've already discussed and one for some
9 additional cattle later, correct?

10 A. I believe so.

11 Q. All right. So now this is about the sixth document
12 you've received that says "cost plus" on it with an
13 attachment entitled "cost plus." So, at that point, did it
14 occur to you that perhaps Zia was acting under the
15 impression that when you said "looks good," you meant "looks
16 good" to the cost plus agreement?

17 A. I have no idea.

18 Q. You still didn't have any cattle yet, though, correct?

19 A. Oh, we had cattle.

20 Q. From Zia.

21 A. Oh, I don't recall.

22 Q. All right. Most of the cattle came a little later,
23 though, correct?

24 A. I don't remember.

25 Q. Why didn't you respond to this e-mail and say, "I know

1 you've sent me six cost plus updates, but I'm not agreeing
2 to a cost plus; let's be clear about this"?

3 A. I don't know.

4 Q. Please put Exhibit 36 up.

5 So, Mr. Scherer, this is a document from Mike
6 Rogers to Narciso; attached is the updated cost plus model
7 and the Prewitt invoice for the 83 head sacrificed on
8 May 18, 2019.

9 Do you remember receiving this e-mail forwarded
10 to you by Narciso later that day on April 22nd?

11 A. I'm sure I do.

12 Q. This is the first e-mail that I'm aware of discussing
13 any cattle being ready for sacrifice. Do you believe that
14 to be true or do you know otherwise?

15 A. To the best of my knowledge, yes.

16 Q. All right. And then Zia started sending you bills,
17 correct?

18 A. To the best of my knowledge.

19 Q. They started sending you bills for the care and
20 feeding, et cetera, of the calves for Tyson to pay, correct?

21 A. I believe that's what their intent was, yes.

22 Q. All right. Please put Exhibit 151 up.

23 Please tell me if you recognize this e-mail.

24 A. Yes, sir.

25 Q. All right. And there were invoices attached, correct?

1 A. I believe.

2 Q. February 23, you get the first e-mail mentioning
3 cattle being ready for sacrifice. February 24, you get
4 invoices. I'm sorry, I'm sorry. Not February. May 23, you
5 get the e-mail saying the cattle are ready to be sacrificed.
6 May 24 you get the cattle invoices are starting to come.
7 And then you respond on May 25. Do I have the chronology
8 correct?

9 A. I believe so.

10 Q. (Reading) "I'm not paying for the cost of calves.
11 That's not what we do. What are you trying to do here?"
12 You sent this to Narciso very early in the morning of
13 May 25, correct?

14 A. Correct.

15 Q. At this point, the cattle are either already being
16 sacrificed or are very close, correct?

17 A. The first group, yeah.

18 Q. Zia has been locked in on this deal with you for
19 roughly 9,000 head for basically four months -- February,
20 March, April, May -- correct?

21 A. I believe so.

22 Q. When you received the seven different, seven separate
23 e-mails giving the cost plus costs, you could have said in
24 response to any one of them, "I'm not paying for the cost of
25 the calves, that's not what we do, what are you trying to do

1 here," correct?

2 A. Yeah, I guess I could have, yeah.

3 Q. But you didn't send this until the calves -- the cows
4 were ready to be sacrificed and you started getting bills,
5 correct?

6 A. That is correct.

7 Q. Because you knew all along that, if you made a fuss
8 about the cost plus agreement, Zia wouldn't send you the
9 cattle for your Whole Foods deal, correct?

10 A. I don't recall.

11 Q. Is there any other explanation for the fact that, as
12 you've already testified, you never intended, on
13 February 4th, to pay any of the costs on the latter nine
14 columns; between February 4 and May 25, the better part of
15 four months -- why you never, during any of that period,
16 said "I'm not paying the cost of the calves" other than you
17 wanted Zia to continue sending you the cattle which you
18 needed for your deal and you knew, if you rocked the boat,
19 you wouldn't get them?

20 A. I don't agree.

21 Q. Where is the other e-mail? Where is any objection,
22 ever, to any of these costs?

23 A. I never agreed to a deal.

24 Q. So you get the cattle now. There's no other deal on
25 the table, correct?

1 A. To my knowledge.

2 Q. All right. So now that you get cattle, you're going
3 to pay what you want to pay, correct?

4 A. I paid whatever was negotiated.

5 Q. There was nothing negotiated here, ever -- we covered
6 that -- except for the February 4th cost plus agreement,
7 correct?

8 A. Whatever was in the pricing is how they were paid.

9 Q. There's nothing in the pricing that was negotiated,
10 Mr. Scherer. You told me that an hour ago, correct?

11 A. I probably did, yeah.

12 Q. All right. So there's nothing else negotiated. So
13 you decide how to pay Zia based on what you wanted to pay
14 all along, correct?

15 A. Can you rephrase the question?

16 Q. The total costs here were 16.3 million. You paid
17 12.5. Do you have any reason to disagree with that?

18 A. No, I believe that's what you showed.

19 Q. Okay. And you knew I was going to ask you that
20 question for the last year. You didn't look that up,
21 correct?

22 A. No, I did not.

23 Q. Okay. How did you determine to pay the 12.5 million
24 and not 16.3 or some other number?

25 A. I never looked at a total head number. I just -- I

1 looked at it by lot, by cattle, by day. And if Verna had
2 the pricing, that's what she entered to the accountant
3 group.

4 Q. Verna wasn't on any of these cost plus e-mails,
5 correct?

6 A. That is correct.

7 Q. Did you ever tell Verna you received seven different
8 e-mails with a cost plus agreement attached to it and, in
9 one of them, you said "looks good, get it done ASAP"? Did
10 you ever tell anyone until after this?

11 A. I just shared it with Verna as inventory.

12 Q. You didn't share the cost plus agreement with Verna,
13 did you?

14 A. I printed it off and showed her, yes.

15 Q. So Verna saw the costs, as well?

16 A. She saw the inventory that we looked at.

17 Q. What's Verna's position?

18 A. She's hedging manager, slash, scheduler.

19 Q. So you and the hedging manager, Verna Barrett [sic],
20 both have the costs, and yet she puts down some other
21 number?

22 A. Whatever Narci and John agreed to the year prior.

23 Q. We've talked about that, Mr. Scherer. There's not
24 going to be any evidence before this jury about whatever
25 John and Narci agreed to, correct?

1 A. I guess so.

2 Q. And, if they had agreed to it, Narciso told you
3 for weeks, "We're not doing the old deal, we lost
4 4 million," correct?

5 A. I believe he said that, yeah.

6 Q. So you know that's not going to be the deal here,
7 correct?

8 A. Yeah.

9 Q. But you put it in the book to pay that amount anyway,
10 even though you knew, the whole time, he had rejected that
11 and forwarded you a different proposal that you approved,
12 correct?

13 A. That what?

14 Q. That you approved, correct?

15 A. That I approved?

16 Q. You knew, the whole time, you were going to pay the
17 number you thought somebody proposed a year earlier,
18 regardless of any proposal, correct?

19 A. Because I did not have a cost plus deal.

20 Q. At some point, did you discuss this situation with
21 Mr. Nelson, that you received a bill that Zia expected to be
22 paid according to a cost plus agreement?

23 A. Correct.

24 Q. How did that conversation come about?

25 A. Same way I've described it. I told him I was looking

1 at it as an inventory, and here's what we got.

2 Q. Did he call you into his office? What happened?

3 A. Oh, we talked at the desk and then we went into the
4 conference room.

5 Q. Did you share with him all of the cost plus e-mails?

6 A. I told him there's been multiple numbers.

7 Q. Did you share with him all of the cost plus update
8 e-mails?

9 A. Not all of them, no.

10 Q. Did you share any of them with him?

11 A. Shared one, yeah.

12 Q. Which one?

13 A. The very last one we received.

14 Q. How about the first one where you responded "looks
15 good"? Did you share that with your boss when he asked
16 about this?

17 A. He didn't ask about it until then.

18 Q. When he asked about it, did you tell him, "By the way,
19 they sent me this proposal in February, and I responded,
20 'looks good'"? Did you share that e-mail with him?

21 A. I told him that I approved the inventory, yes.

22 Q. Did you share that February 4th e-mail with
23 Mr. Nelson?

24 A. I don't recall.

25 Q. Were you nervous, after being demoted the year before

1 for inventory mismanagement, that -- with Zia, that this
2 might create some issues for you?

3 A. No, sir.

4 Q. Do you now know, from any source, what Zia's
5 out-of-pocket costs -- just the out-of-pocket costs, not
6 talking about any premium, the out-of-pocket costs were to
7 raise the cattle that you took and sold to Whole Foods?

8 A. I believe he listed that on the bottom here, doesn't
9 he?

10 Q. Well, it --

11 A. Out-of-pocket, I don't know.

12 Q. Okay. So I said in opening statement -- and we're
13 going to hear a witness on this, but I said 13,647- --
14 excuse me. I said \$15,270,000 were Zia's actual just plain
15 old out-of-pocket costs for the cattle that were involved in
16 this -- on this proposal Exhibit 18. Do you have any reason
17 to believe that, either way?

18 A. You said it. I believe you.

19 Q. Were you, at all, concerned that you paid Zia
20 \$15,595,000 for cattle that cost in feed, freight,
21 out-of-pocket, \$15,270,000? Make any difference to you that
22 they're 2.7 million under their cost because of what you
23 paid?

24 A. How do you -- can you repeat what you would like me to
25 say here?

1 Q. I'd like to know whether, when you sent the "I'm not
2 paying for your calves" e-mail and you talked to Mr. Nelson,
3 did it concern you that the amount you and, apparently,
4 Verna had decided to pay was 2.7 million less than Zia's
5 costs, not counting any markup or premium?

6 A. I did not realize any difference.

7 Q. Narciso called you several times to talk about it,
8 correct?

9 A. He called.

10 Q. You didn't answer, correct?

11 A. I might not have been in the office.

12 Q. He left you voicemails, and you never responded to
13 them, correct?

14 A. I don't recall.

15 Q. So he called Kevin Hueser; do you know that?

16 A. I don't recall.

17 Q. Do you know if he called Justin Nelson?

18 A. I have no clue.

19 Q. All right. Why didn't you call him back and say,
20 "Let's talk about this"?

21 A. All depends on where I was at. I'm out of the office
22 quite a bit. If it was a voice message on my office phone,
23 I probably wasn't there to get it.

24 Q. Where did Mr. Perez usually call you? On your cell
25 phone, correct?

1 A. At times, but he would also call me in the office
2 quite a bit.

3 Q. And you never got back to the office to return that
4 call?

5 A. At times, I would. At times, I didn't.

6 Q. Why at this time did you not return any of his calls?

7 A. I don't recall.

8 Q. You know, giving you the benefit of every doubt
9 there's been a huge misunderstanding, you know they're
10 upset, you know they lost 4 million the last year in a
11 transaction, don't you think that's something you might want
12 to return that call?

13 A. Yeah, it's a bad deal.

14 Q. Bad deal for Zia, correct?

15 A. Bad deal how you buy the calves and what the market is
16 at trade.

17 Q. Worked out very well for Tyson, correct?

18 A. I cannot "yea" or "nay" to that.

19 Q. We're going to hear testimony, I'm assuming tomorrow,
20 from Dr. Justin Benavidez from Texas A&M; are you aware of
21 that?

22 A. Yes.

23 Q. Do you know him?

24 A. Met him last night.

25 Q. You had a Zoom with him, though, a year ago, correct?

1 A. I don't believe I did.

2 Q. Were you ever on a call or Zoom with him ever before
3 last night?

4 A. I don't believe so. I don't recall.

5 Q. All right. You know he's -- he had nothing to do with
6 this transaction, correct?

7 A. Correct.

8 Q. You know Tyson's paying his way, paying his expenses,
9 paying an hourly rate of -- I'm going to guess, 20,000;
10 we'll find out tomorrow -- to come in here and testify,
11 correct?

12 A. All I know is he's coming here.

13 Q. He never -- you never talked to him to give him your
14 side of the story?

15 A. No, sir.

16 Q. All right. I'm going to try to wrap this up soon.

17 The -- you remember I asked you in your
18 deposition if you have contracts with any of the people who
19 supply you beef, correct?

20 A. Contract, be it CME or what?

21 Q. Anything. I mean, do you have any contract with them?

22 A. No.

23 Q. Okay. You don't have CME contracts with any of them,
24 either, right? You don't have a written contract with
25 anyone?

1 A. We might have a written CME contract with cattle
2 feeders, yes.

3 Q. Okay. The -- what is "CME"?

4 A. "Chicago Mercantile Exchange."

5 Q. How does that differ from the Nebraska weighted
6 average?

7 A. It's based on the board price. Chicago Board of
8 Trade.

9 Q. Why would one look at the CME as opposed to the NWA?

10 A. Well, it depends on their preference. It depends on
11 their lending institution, I believe, and having a contract
12 with a packer or a hook.

13 Q. So I asked you in your deposition how many different
14 Zias do you do business with? And I believe you said there
15 were about 200?

16 A. 200 suppliers, yes, sir.

17 Q. Okay. And the vast majority, then, you don't have any
18 contract with, correct? Not a written contract.

19 A. No. What we installed in 2018 when I took the program
20 back over was called a..."cattle commitment form" that we
21 directly work with the feedyards. And they line out the
22 cattle by month, what the quality of the cattle is, whether
23 it's GAP, verified natural, NHTC, and they put a price per
24 head, premium.

25 Q. So I asked you in your deposition how many of those

1 suppliers there are. And do you recall saying about 200?

2 A. Yes, sir.

3 Q. And I also asked you, "You can't possibly remember
4 these numbers," so you -- I believe you told me you'd tell
5 Verna; she'd put it down somewhere, correct?

6 A. What number?

7 Q. You couldn't remember the arrangement with all 200.
8 And I asked you how did you remember them all, since they're
9 not in writing. And you told me you told Verna, and she'd
10 mark it down somewhere, correct?

11 A. Yes, sir.

12 Q. All right.

13 Please pull up Exhibit 39.

14 While we're pulling that up, let me just ask you
15 some names. So there's an e-mail we're about to see written
16 to some people. One is Richard Hoff. Who is that?

17 A. Cattle buyer.

18 Q. Where is he located?

19 A. He lives in -- just north of Scott City, Kansas.

20 Q. You said he's a cattle what? I'm sorry.

21 A. Cattle buyer.

22 Q. Okay.

23 A. He covers that area for High Choice.

24 Q. What is High Choice?

25 A. Feedyard, finish feedyard.

1 Q. Does he work for High Choice Tyson or otherwise?

2 A. He works for Tyson.

3 Q. And then Jacob Bach, who is he?

4 A. Cattle buyer.

5 Q. For Tyson?

6 A. For Tyson.

7 Q. Kevin Allison, who is he?

8 A. Cattle buyer, Tyson.

9 Q. Mike Wier, cattle buyer for Tyson?

10 A. Cattle buyer for Tyson.

11 Q. Melvin Bishop, cattle buyer for Tyson?

12 A. Correct.

13 Q. And then Justin Nelson, your former boss, correct?

14 A. Yes, sir.

15 Q. Ms. Gallagher, if we could blow it up just a little
16 bit, please.

17 So this is the e-mail you sent to a number of
18 Tyson employees, correct?

19 A. Yes, sir.

20 Q. You said (reading), "Yesterday, I received an e-mail
21 from one of our suppliers who finish cattle for Zia Ag
22 stating, 'Send all of the feed bills, cost of cattle, and
23 all incremental to Tyson in an invoice form.'"

24 Who was the supplier that sent that?

25 A. Excuse me?

1 Q. Who was the supplier that you heard from? You said,
2 "Yesterday, I received an e-mail from one of our suppliers."
3 Do you remember who?

4 A. I don't remember which one it was.

5 Q. You wrote back (reading), "We do not have any such
6 agreement with Zia Ag. Let me repeat this: We do not have
7 any such agreement. We will continue to pay for the cattle
8 as we always have using the Nebraska weighted average and
9 agreed-upon premiums."

10 Do you see that, sir?

11 A. Yes, sir.

12 Q. But it's not correct that you had always paid Zia
13 according to the Nebraska weighted average, correct?

14 A. Had I paid them?

15 Q. The times prior to this...

16 A. It depended if they had a contract with the CME or --
17 that went through us and Mark Lytle or we paid them on
18 Nebraska weighted average, dressed, delivered.

19 Q. So sometimes it was Nebraska weighted average, plus a
20 certain premium, correct?

21 A. Yeah.

22 Q. And then sometimes it was Nebraska weighted average
23 and a different premium, correct?

24 A. It depended on what classification of cattle they are.

25 Q. And then sometimes, with Zia, it was CME --

1 A. Plus.

2 Q. -- for a certain premium?

3 A. Plus the premium.

4 Q. And then sometimes CME for a different premium,
5 correct?

6 A. Depending on the cattle type, yes.

7 Q. All right. So when you say (reading), "We will
8 continue to pay for the cattle as we always have, using the
9 Nebraska weighted average," you hadn't always paid with the
10 Nebraska weighted average, correct?

11 A. Correct.

12 Q. In fact, you'd only had one transaction, ever, where
13 you paid Zia according to the manual, correct?

14 A. I don't recall.

15 Q. And that was the transaction where you left the cattle
16 in the yard for 12 months correct?

17 A. I don't recall.

18 Q. So when you say "and the agreed-upon premiums," there
19 were no agreed-upon premiums, at all, in this case, correct?

20 A. I don't recall.

21 Q. Do I understand that Mr. Kevin Hueser is going to
22 testify here in this trial?

23 A. That is correct, to my knowledge.

24 Q. Okay. Did he have any involvement, whatsoever, in
25 this transaction?

1 A. I don't believe so.

2 Q. What does Mr. Hueser do as a job responsibility right
3 now?

4 A. Currently today?

5 Q. Yes, currently today.

6 A. Today, he is waiting to retire.

7 Q. Is he working on a particular project?

8 A. He does some stuff; proof feed bills, stuff like that.

9 Q. He's working on one particular project, correct?

10 A. That is correct.

11 Q. He works from home and spends his whole time on the
12 one particular project we talked about in Washington that
13 got Mr. Nelson -- that resulted in his change of employment,
14 correct?

15 A. That is correct.

16 Q. All right.

17 A. But not from home. He's actually in the office now.

18 Q. Okay. But, I'm sorry, maybe you answered this, and I
19 missed it: Did he have anything to do with this
20 transaction?

21 A. Zia?

22 Q. This Zia transaction.

23 A. No, sir.

24 Q. Ms. Gallagher, please put up Exhibit 60.

25 THE COURT: Did you say "61," Mr. Worden?

1 MR. WORDEN: 6-0.

2 THE COURT: 6-0 has not been admitted.

3 What's Tyson's position on 60?

4 MR. FISHER: No objection, Your Honor.

5 THE COURT: Exhibit 60 is admitted.

6 (Joint Exhibit 60 was admitted into evidence.)

7 MR. WORDEN: Thank you.

8 THE COURT: Also, Mr. Worden, just so you know,
9 we're going to break in about five minutes. So if you want
10 to let me know when is a good time for you, that's fine.

11 MR. WORDEN: I'm trying to speed up.

12 THE COURT: If you want to go a little over,
13 that's okay, too, but just give me a good breaking point
14 here soon.

15 MR. WORDEN: I'm trying to finish with the
16 witness for the day.

17 THE COURT: If you don't have that much to finish
18 with the witness, that's fine, we'll finish the witness. So
19 go ahead.

20 (Discussion off the record.)

21 Q. (BY MR. WORDEN): And then, Ms. Gallagher, can
22 you just scroll through it slowly, so Mr. Scherer
23 can eyeball it.

24 And, Mr. Scherer, as she does this, can you tell
25 me whether you recognize it.

1 A. Yeah. These are off our website for Open Prairie
2 natural cattle.

3 Q. What is Open Prairie natural cattle?

4 A. Verified natural beef.

5 Q. Now, is "Open Prairie" a particular brand name of
6 Tyson Fresh Meats?

7 A. Yes, sir.

8 Q. Okay. And then where is Open Prairie verified natural
9 meat sold?

10 A. It goes all over the place. We do a lot with
11 Chipotle. We do some business, with the grinds and
12 trimmings, with Shake Shack, kind of a gourmet burger on the
13 East Coast; various restaurants and other retailers.

14 Q. And supermarkets, too?

15 A. They're starting to pick up more and more, yes, sir.

16 Q. Please turn to page -- the second page, Ms. Gallagher.
17 There is a section entitled "Improving Your Margins."

18 So while we're getting that, who is the audience
19 for this?

20 A. Consumer.

21 Q. Okay. Technical difficulties. We'll get it here in a
22 moment.

23 A. It happens.

24 Q. Yeah. Thank you.

25 (Discussion off the record.)

1 MR. WORDEN: Your Honor, while we are getting the
2 document, I promise I have a couple questions on this and
3 then I'm done with Mr. Scherer.

4 THE COURT: That's fine.

5 MR. WORDEN: We can probably break a
6 couple minutes early.

7 THE COURT: That's fine.

8 MR. WORDEN: Okay.

9 Q. (BY MR. WORDEN): So, Mr. Scherer, you said,
10 "the consumer," but it says (reading), "improving
11 your margins." Who is Tyson Fresh Meats talking to
12 here?

13 A. Probably retail.

14 Q. So it says -- and I realize this is a little dated --
15 it says (reading), "The natural fresh beef category has
16 shown consistent and significant growth."

17 Is that true, though, today? The last few years,
18 has there been consistent and significant growth?

19 A. It has been.

20 Q. Okay. And, at least during this period (reading),
21 "There was a 250 percent total increase in dollar sales over
22 the five-year period from 2004 to 2008."

23 Has there been consistent exponential growth in
24 this market?

25 A. Yeah. We've hit price points a couple times during

1 that.

2 Q. All right. The prices you're able to sell this cattle
3 have consistently gone up the last several years, correct?

4 A. It's had to because the cost of the cattle have gone
5 up.

6 Q. So the last -- in the five years before 2019 when this
7 transaction came along, the amount Tyson Fresh Meats was
8 able to receive for the finished cattle from restaurants,
9 supermarkets had gone up a great deal during that five-year
10 period, correct?

11 A. I know it went up. I just don't know how much.

12 Q. Conversely, the amount, during that five-year period,
13 you were paying to the Zias of the world who were providing
14 the cattle had gone down compared to the five years before
15 that, correct?

16 A. I don't recall.

17 Q. When you met Dr. Benavidez last night, how did you
18 meet him?

19 A. Shook his hand.

20 Q. Pardon me?

21 A. Shook his hand.

22 Q. Did you --

23 A. At our hotel.

24 Q. All right. And was he present as you were preparing
25 to give your testimony today?

1 A. No, sir.

2 Q. Okay. Did you have preparation to give your testimony
3 today?

4 A. Back couple days ago.

5 Q. You met with lawyers, correct?

6 A. I did.

7 Q. Okay. Do you know anything about Dr. Benavidez'
8 testimony?

9 A. Like I said, I met him last night for the first time.

10 Q. Did anyone give you his transcript from the deposition
11 I took of him last year where he describes what his opinions
12 are?

13 A. No, sir.

14 MR. WORDEN: That's all I have. Thank you,
15 Mr. Scherer.

16 THE WITNESS: Thank you.

17 THE COURT: All right. Thank you. We're going
18 to go ahead and break for the day. It's five o'clock.
19 We'll see you back here at 8:30 in the morning to continue.

20 All rise for the jury.

21 I'm sorry, I didn't give my night warning. Hold
22 on one second. I'm sorry.

23 When you leave here, your friends or family may
24 ask you about your day of jury duty. As I mentioned
25 yesterday, you may not discuss any of the evidence with

1 anyone until the trial is concluded and I dismiss you.

2 Again, this includes family and close friends. You must not
3 hear or read about the trial or do any sort of research on
4 your own. The reason is that your decision in this case
5 must be made solely on the evidence presented in trial.

6 Thank you. We'll see you tomorrow.

7 (Jury not present.)

8 All right. You may be seated.

9 And, sir, you can return to counsel table.

10 Counsel, besides the cross and potential redirect
11 of this witness, I count three remaining witnesses: The
12 second Mr. Perez, the expert Benavidez, and Mr. Hueser. Any
13 other witnesses that I'm missing from Zia?

14 MS. DIAMOND: No, Your Honor.

15 THE COURT: From Tyson?

16 MR. FISHER: No, Your Honor.

17 THE COURT: So the representations about
18 potentially concluding tomorrow, do you think that can
19 happen with this many witnesses, or what do the parties
20 think?

21 MR. WORDEN: I think -- well, I guess --

22 THE COURT: Come up to the mic.

23 MR. WORDEN: -- (inaudible) Mr. Fisher, but I
24 think these three will be substantially shorter than the two
25 we've had.

1 (Reporter attempted interruption for clarification.)

2 THE COURT: Okay. So you think maybe tomorrow,
3 still, then?

4 MR. WORDEN: Pardon me?

5 THE COURT: You think maybe we'll still end
6 tomorrow, do instructions and closings?

7 MR. WORDEN: That's ambitious, but maybe.

8 THE COURT: Okay.

9 What do you think?

10 MR. FISHER: I think there would be no difficulty
11 getting through all the witnesses tomorrow. Closing may be
12 a bit longer than that.

13 THE COURT: Okay. So maybe do all the witnesses
14 tomorrow and then potentially do instructions and closings
15 Thursday morning and give it to the jury then?

16 MR. WORDEN: That's -- I think that's very
17 doable. And, certainly, I suspect I speak for Mr. Fisher as
18 well, I would prefer to have some time to digest the
19 testimony --

20 THE COURT: I understand --

21 MR. WORDEN: -- and organize a little bit.

22 THE COURT: -- I understand.

23 MR. FISHER: I agree, Your Honor.

24 THE COURT: Okay. That will be an outline of our
25 game plan, is to get through everybody else tomorrow, which

1 will give you-all the advantage of having overnight to
2 prepare closings and PowerPoints and whatever y'all are
3 doing for closings. And we'll give instructions and close
4 in the morning.

5 Okay. Anything else I can help either side with?
6 Zia?

7 MR. WORDEN: No, thank you, Your Honor.

8 THE COURT: Tyson?

9 MR. FISHER: I don't believe so, Your Honor.

10 THE COURT: All right. We'll see you at 8:30 in
11 the morning. Thank you both.

12 (The proceedings adjourned at 5:02 P.M. and reconvened on
13 Wednesday, July 13, 2022, at 8:32 A.M.)
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1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

3
4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce Chavez, CRR, RPR, NMCCR, and
6 Federal Official Court Reporter in and for the United States
7 District Court for the District of New Mexico, do hereby
8 certify that pursuant to Section 753, Title 28, United
9 States Code, that I did report in stenographic shorthand to
10 the best of my skill and ability the foregoing pages 1-272
11 of Volume II of IV of the proceedings set forth herein, that
12 the foregoing is a true and correct transcript of the
13 stenographically recorded proceedings held in the
14 above-entitled matter and that the transcript page format is
15 in conformance with the regulations of the Judicial
16 Conference of the United States.

17
18 Dated this 3rd day of August 2022.

19
20 S/Electronically Filed
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